IN THE

SEP 27 1974

SUPREME COURT OF THE UNITED STATES

CLERK

October Term, 1974

No. 74-350

TROOPERS LODGE No. 41, FRATERNAL ORDER OF POLICE, an Illinois not-for-profit corporation, as representative of its members employed by the State of Illinois; HENRY SIKORSKI, Trooper of Cook County, Illinois; ROGER BOONE, Trooper of Sangamon County, Illinois; LESLIE GUNNING, Sergeant, Sangamon County, Illinois; JOHN OLDANI, Trooper, Madison County, Illinois; MIKE DONOVAN, Trooper, St. Clair County, Illinois; and PETE McALLISTER, Trooper, Peoria County, Illinois, and BILLIE JOE BIVENS, Trooper, Sangamon County, Illinois;

and

~~ILLINOIS STATE EMPLOYEES ASSOCIATION, et al;~~

and

~~ILLINOIS ASSOCIATION OF HIGHWAY ENGINEERS, et al,~~

Petitioners,

vs.

DANIEL WALKER, as Governor of the State of Illinois; ABNER J. MIKVA, as Chairman of the Illinois Board of Ethics; GEORGE M. BURDITT, as member of the Illinois Board of Ethics; JOHN KINNEMAN or his successor, as member of the Illinois Board of Ethics; WALT FOODY, as Executive Director of the Illinois Board of Ethics; and DWIGHT E. PITMAN, Superintendent, Illinois State Highway Police,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Petitioners respectfully pray that a Writ of Certiorari

issue to review the final order of the Supreme Court of Illinois entered herein on July 1, 1974 upholding the constitutionality of Governor Daniel Walker's Executive Order No. 4 (1973).

OPINIONS BELOW

The Opinion of the Supreme Court of Illinois below (Appendix A) is reported in 57 Ill. 2d 512 and ___ N.E. 2d ___. The opinion of the trial court (Circuit Court of Sangamon County, Illinois) below (Appendix B) was not reported.

JURISDICTION

The final order of the Supreme Court of Illinois was entered on July 1, 1974. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

Does Governor Daniel Walker's Executive Order No. 4 (1973), and the Financial Disclosure Statement issued implementing it, requiring full disclosure of all income, assets and liabilities of individual petitioners and their families, associational interests and the required filing of their individual Federal and State income tax returns:

(1) Constitute an unreasonable, unnecessary and overly broad invasion of the individual petitioners constitutional right of privacy and fail to demonstrate a compelling need for such information.

(2) Violate petitioners' rights to equal protection of the law as an unreasonable classification in making the order applicable only to employees of State agencies whose vouchers are subject to approval of the Department of Finance which by law excludes from the order employees of the Governor's Office, the Board of Ethics and nearly twenty (20) other major State agencies under the jurisdiction of the Governor.

(3) Violate the "void for vagueness" principal of due process and equal protection of the law insofar as it fails to define or delineate who are "persons in positions subject to undue influence".

(4) Violate Petitioners rights of freedom of association under the First Amendment to the Constitution by compelling the disclosure by public employees of any offices held by them in political and social organizations.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The principal constitutional provisions involved are the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States. Executive Order No. 4 (1973) of the Governor of the State of Illinois, the only State regulatory provision applicable to the case, is set forth, infra as Appendix "C" and made a part hereof.

STATEMENT OF THE CASE

On February 26, 1973, Governor Daniel Walker issued Executive Order No. 4 (1973) entitled "Ethics Disclosure" (the "Walker Order") (Appendix "C"). Executive Order No. 4 created a three member Board of Ethics ("The Board"). The Board was given jurisdiction over each agency whose vouchers are subject to approval of the Illinois Department of Finance. Between April 15 and April 30th of each year each person in each agency subject to the jurisdiction of the Board:

(a) Who was appointed by the Governor; or

(b) Receives $20,000.00 per year from the State; or

(c) Is a person in a position subject to undue influence (as determined from time to time by rule of the Board) is required to file with the Board a sworn Statement of Economic Interest (See Appendix "D") and a copy of his most recent federal and state income tax returns.

The Statement of Economic Interest (Appendix D) is a 9 Page document consisting of 51 separate questions which require disclosure of all assets, liabilities and net worth, income, gifts, blind trusts and economic associations of the individual, his spouse and all other members of his immediate family living in his or her household. The Statement of Economic Interest of each person, other than one appointed from the public to serve on a Board or Commission, is open to public inspection. Failure to make timely filing of a required document, the making of a false or misleading statement or an omission in a document, and failure to cooperate with the Board are grounds for disciplinary action, including discharge of the employee. (Appendix C, p. 76)

The jurisdiction of the Board is limited to persons em-

ployed by State agencies whose vouchers are subject to approval of the Department of Finance, ("Finance"). The vouchers of many agencies of state government are subject to the approval of Finance, while the vouchers of many agencies of the state are not. Many persons in State government hold positions in agencies subject to such approval which are identical or similar to positions held by persons in agencies whose vouchers are not subject to the approval of the Department of Finance.

The vouchers of the Governor's Office, the Lieutenant Governor's Office, the Secretary of State, the State Treasurer, the Superintendent of Public Instruction, the Attorney General's Office, the Courts of Illinois, the Comptroller, the Legislature, State Colleges and Universities and numerous other departments, boards and commissions are not subject to the approval of Finance and are not covered by the "Walker Order".

Three class actions were initiated by (1) Troopers Lodge No. 41, Fraternal Order of Police and certain named individual members representing approximately 1,190 of its members; (2) The Illinois State Employees Association and certain named individual members representing 13,000 state employees and (3) the Illinois Association of Highway Engineers and certain named individual members on behalf of its 2,000 members seeking to restrain the enforcement of the Walker Order challenging, both the constitutional and legal propriety of the Walker Order and the financial disclosure statement implementing it. The Three class actions were consolidated for hearing by the trial Court. The Plaintiffs in the three actions represent persons in each of the three categories of persons required to make disclosure under the Walker Order including immediate family members of state employees.

Those plaintiffs in class action (1) above are the petitioners herein.

The petitioners throughout the trial contended that The Walker Order: (1) violates their right of privacy, (2) denies them equal protection of the law, through improper classification, (3) is "void for vagueness" in violation of due process and equal protection of the law, and (4) violates petitioners "freedom of association", all guaranteed to them under the Constitution of the United States. These federal constitutional points were raised in Petitioners pleadings and proof in the trial court and were passed upon by that Court (Appendix B) which upheld the executive order in part and held it invalid in part for violating those rights. The Supreme Court of Illinois upheld the entire order and decided all of the federal constitutional questions raised before the trial court and that court adversely to Petitioners (Appendix A).

REASONS FOR GRANTING THE WRIT

This Court has never specifically passed upon the question of whether a person's financial affairs are protected by the Constitutional right of privacy. It is a constitutional question profoundly in need of clarification and delineation for the good of all public employees. Litigation has already ensued in Illinois in this case and in Stein vs. Howlett, 52 Ill. 2d 570, 289 N.E. 2d 409 (1972), in California (Carmel By The Sea vs. Young, 466 Pac. 2d 225 (1970), in Washington (Fritz vs. Gorton, 83 Wash. 2d 275 (1974)) and is now pending in the Circuit Court For Montgomery County, Maryland (Equity No. 49873). This case presents a fundamental question of personal liberty for hundreds of thousands of public employees. This Court's determination of the question will establish a precedent not only for future determination of the constitutional right

of privacy in the United States, but the course of financial disclosure at all levels of government. This case presents squarely the issue of the right of the states, under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution to predicate public employment upon the compelled disclosure of the employees economic and political interests and beliefs.

Basically and succinctly, the Walker Order violates the constitutional rights of the individuals affected to "be let alone". It is easy to make the glib assertion that no one has a constitutional right to a public job. But that does not approach the real issue of privacy, due process and equal protection of the law. Financial disclosure is of a piece with such things as flag salutes, loyalty oaths, disclaimer affidavits and all the other apparatus and devices for putting people on record and compelling them to declare their views, beliefs and interests in public. A person's economic interests and political association (Question 49 Appendix D) are just as sacred to him as are his religious beliefs. All of them are deeply personal and private and become mere formalities when public profession is required. The Walker Order is a classic example of conscious efforts by state authorities to break down the barriers erected by the privilege against unwarranted intrusions into the privacy of the individual. It is but another example of the growth of arrogant executive power in State and National governments in this country.

1. The Walker Order and the Financial Disclosure Statement implementing it are unnecessary and are overly broad invasions of the right of privacy. As pointed out by Mr. Justice Douglas in *Griswold vs. Connecticut*, "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved

by means which sweep unnecessarily broad and thereby invade the area of protected freedoms." (381 U.S. 479 at 485, 84 S. Ct. at 1682 citing NAACP vs. Alabama, 377 U.S. 288, 307, 84 S. Ct. 1302). Under the theory announced in *Griswold* the government may not invade the constitutionally protected area of privacy except upon a showing of (1) a compelling need, and (2) that the intrusion is not overly broad. As stated by Mr. Justice Goldberg in *Griswold*: "The law must be shown necessary and not merely rationally related to the accomplishment of a permissible state policy." (381 U.S. 479 at 497).

At the trial of this cause the Respondents introduced no evidence whatsoever to demonstrate the compelling need for the information required to be disclosed, or even that the desirability of the order justified the sweeping breadth of its inquiry. The Financial Disclosure Statement required to be filed includes far more than a mere net worth statement. It also requires (a) a detailed statement of all assets and liabilities, (b) all income from all sources, (c) all gifts received from other than members of one's family in excess of $50.00, and (d) all organizations, including *political organizations* of which an employee was a partner, officer, trustee, employee or director since April 1, 1972. Not only is the employee bound to disclose this information, but as to items A, B and C above the employee must disclose all information required thereunder of his spouse and members of his immediate family living with him. All of the foregoing information was to be available for public inspection.

The requirements of the Walker Order do not stop here, however. In addition, each employee in an agency covered by the Order must also file his latest state and federal income tax return as a part of his disclosure statement.

Although by rule of the Board these were not to be available for public inspection, the Walker Order requires that pertinent portions thereof were to be considered part of the Financial Disclosure Statement and upon a mandamus action against the Board of Ethics based upon the language of the order, would presumably have to be made available to the public. There was no showing of a compelling need for the information required to be disclosed, and the *breadth* of the compelled disclosure and income tax returns is appalling. It would be difficult to conceive of an intrusion of privacy more flagrant than the thrust of the Walker Order and the Financial Disclosure Statement issued under it. "Financial transactions can reveal much about a person's activities, associations and beliefs. At some point governmental intrusion upon these areas would implicate legitimate expectations of privacy." (Justices Powell and Blackman concurring in California Bankers Assn. vs. Shultz, — U.S. — 39 L. Ed. 2d 812 at 850).

2. The Walker Order violates the equal protection clause of the Constitution by applying only to those agencies whose vouchers are subject to approval by the Department of Finance. By its own terms the Walker Order does not reach persons appointed to or employed by agencies under the jurisdiction of the Governor. Instead, it applies to "each agency whose vouchers are subject to approval of the Department of Finance." (Appendix C).

At first blush, this phrase does not suggest any unreasonable discrimination. However, an examination of just what agencies do have their vouchers approved by the Department of Finance, reveals incredible gaping holes in the scope of the Order. The State Finance Act provides that the Department of Finance is to certify and approve

vouchers of departments under the Civil Administrative Code (Ill. Rev. Stats. Ch. 127, Sec. 1 et seq. (1973)) as well as "all other officers, boards, commissions and agencies of the State Government" (Ill. Rev. Stat., Ch. 127, Sec. 146(7), (14), (1973)). However, there are many significant exceptions. Elected state officers in the Executive Department have their vouchers, "certified and approved by such officers" and not by the Department of Finance (Ill. Rev. Stat. Ch. 127, Sec. 146(1), (1973)). Accordingly, the Governor's own office as well as its immediate supporting agencies, such as the Bureau of the Budget, the Illinois Law Enforcement Commission, the Governor's Office of Human Resources and any other entity that the Governor may create within the scope of his immediate office do not have their vouchers approved by the Department of Finance. Even the Board of Ethics itself is exempted. Thus, from the very date the Walker Order was promulgated, the Governor who wrote the Order, his personal staff, his immediate supporting agencies and the Board of Ethics created to administer the Order were all excluded from the disclosure requirements applying to 6,800 state employees.

This is only the beginning of the inequities created by the Department of Finance voucher standard. Among the persons who will not be required to make any financial disclosure statement at all under the Walker Order are the Governor's appointees to the following agencies:

St. Louis Metropolitan Area Airport Authority
Appellate Defender Commission
Bi-State Development Agency
Chicago Regional Port District Board
Chicago Transit Authority
Commission for Economic Development
Illinois Educational Facilities Authority

Illinois-Indiana Bridge Commission
Illinois-Missouri Bridge Commission
Industrial Development Authority
Industrial Pollution Control Financing Authority
State Investment Board
Metropolitan Fair and Exposition Board

In the area of higher education, we find the Walker Order covers the Board of Higher Education and the Junior College Board. But the Governor's appointees to the Board of Regents, the Board of Governors of State Colleges and Universities, Southern Illinois University and the State Universities Retirement System, all escape the requirement of disclosure because their vouchers are not approved by the Department of Finance. See Ill. Rev. Stat., Ch. 127, Sec. 146(8), (9), (10), (11), and (12) (1973).

Consider the two major areas of potential contract abuse under the jurisdiction of the Governor: capital construction and highway construction. As to capital construction, the Capital Development Board has its vouchers approved by the Department of Finance but the Illinois Building Authority does not. As to highways, the Department of Transportation is a code department under the Civil Administrative Code and therefore, has its vouchers approved by the Department of Finance. (Ill. Rev. Stat. Ch. 127, Secs. 3, 146(7) (1973).) However, the Illinois Toll Highway Authority which constructs and maintains the Tri-State Tollroad, the Northwest Tollroad and the East-West Tollroad is exempt.

The distinction in these areas in applying the standard of the Department of Finance's approval of vouchers is most difficult to understand. Both the Illinois Building Authority and the Capital Development Agency build state buildings with bonds retired by appropriations from the

State Treasury. (Ill. Rev. Stat., Ch. 127, Sec. 213.1 et seq., and Ill. Rev. Stat., Ch. 127, Secs. 751 et seq. (1973).)

Consequently, there will be a whole class of employees and gubernatorial appointees who are bound by the Ethical Code of Conduct promulgated by four succeeding Governors but who are excused from Governor Walker's requirements of full financial disclosure merely because the vouchers of their agencies are not approved by the Director of Finance.

Since this Court's 1886 decision in *Yick Wo v. Hopkins,* 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 2d 220, the standards for testing the reasonableness of any classification for the purpose of government regulation have been frequently and consistently expressed. As more recently stated:

> "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. (Citing cases) It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. 'The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same.' (Citing cases) Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made'." Rinaldi v. Yeager, 384 U.S. 305, 308, 309, 86 S. Ct. 1497, 16 L. Ed. 2d 577, 580 (1966).

The Illinois Supreme Court has similarly interpreted the guarantee of equal protection of the laws. *Marallis v. City of Chicago,* 349 Ill. 422, 183 N.E. 394 (1932). The fact that government action is taken by administrative

order rather than by statute makes no difference for purposes of the protections under the Fourteenth Amendment. (16 Am. Jur. 2d, Constitutional Law, Sec. 540).

The standard in *Rinaldi v. Yeager* requiring *"some relevance"* to the purpose for which the classification is made is not met by the record or by logic in this case. Even the test announced by the trial court could not upheld this Order on the record before the Court. (See Appendix B, p. 49).

> " 'The constitutional safeguard is offended only if the classification rests upon grounds wholly irrelevant to the state's objective . . . a statutory discrimination will not be set aside if any state of facts may be conceived to justify it'." (C. 136, citing *McGowand v. State of Maryland,* 366 U.S. 420, 425-426, 6 L. Ed. 2d 393, 399, 81 S. Ct. 1001 (1961) upholding a Maryland Sunday closing law).

It is wholly irrelevant to the purpose of accomplishing and effecting ethical standards in the Executive Department of state government that an agency under the Governor has its vouchers passed over the desk of the Director of Finance as opposed to some other route more suited to the financial affairs of the agency concerned. This is not just a matter of discrimination by itself. It is a matter of discrimination between whose constitutional right of privacy will be invaded and whose won't. When the discrimination involves constitutionally protected rights, the standard of the Equal Protection Clause must be vigorously and strictly applied. Mr. Justice Douglas spoke to this issue briefly recently in upholding the constitutionality of the Illinois personal property tax exemption for individuals:

> "Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the

States have large leeway in making classifications . . ." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S. Ct., 1001, 35 L. Ed. 2d 351, 354-355 (1973). (noting as a classic example discriminatory taxes on newspapers as abridgement of free press rights, *Grosjean v. American Press Co.*, 297 U.S. 233, 56 S. Ct. 444, 8 L. Ed. 660 (1936).)

The standard of selecting agencies whose vouchers are subject to the jurisdiction of the Department of Finance has no relationship to public policy requiring the disclosure of conflicts of interest. It may be presumed that a government disclosure program favors disclosure by persons involved with State funds and not just with vouchers approved by the Department of Finance. The Governor's jurisdiction extends beyond agencies whose vouchers are approved by the Department of Finance as evidenced by the very fact that his own office staff are not included within that standard and that his power of appointment extends to numerous state agencies similarly not included. If a class is to exist for the purpose of disclosure, it must be reasonable and not arbitrary. Equal protection demands no more and will accept no less, particularly when privacy is invaded and the penalty for failure to comply is discharge from public employment.

3. The classification of "persons in positions subject to undue influence" for purposes of disclosure under the Walker Order (Appendix C, p. 74) is vague, indefinite, and violates the constitutional guarantees of equal protection and due process of the petitioners. The trial court itself was sufficiently persuaded by the record to find that the procedures adopted by the Board deprived Plaintiffs of due process and equal protection because without further definition by the Board, the phrase "lacks sufficient precision to be applied uniformly by numerous depart-

ment heads, each with his own conception of the definition of the term." However, the trial court took the position that the term by itself was not unconstitutionally vague, and that the Governor properly delegated to the Board the responsibility for further definition of it, but that the Board's failure to define the term and develop uniform standards created a constitutional impasse. The trial court, in reaching this result, relied upon the 1947 decision of this Court in *Fahey v. Mallonee,* 332 U.S. 245, 253, 67 S. Ct. 1552, 91 L. Ed. 2030, 2039, for the proposition that the delegation of rule-making functions is proper where there is a sufficiently explicit background of custom adequate for proper administration (Ibid.).

Respondents submit that this classification established by the Walker Order itself was too vague to permit the Board of Ethics to adopt a meaningful definition and guideline for classification and for this reason they did not do so. The term itself defies definition.

The principal issue in the Fahey case was whether Congress could delegate to the Home Loan Board the power to provide for the appointment of receivers. In upholding the power of Congress to delegate this function, the Court specifically noted that no penal sanctions were involved and that the remedies were "not new ones unknown to existing law to be invented by the Board in exercisable range of power." *Fahey vs. Mallonee, Op. Cit.,* 332 U.S. 245, 250.

By contrast, here a Board of Ethics has been created with the authority to investigate conflicts of interest which may be evidence of criminal offense and to recommend remedial action. The phrase itself "persons in positions subject to undue influence" is wholly without prior definition, custom or usage in the conflicts of interest laws of the several states, the United States, or any prior executive order, law

or judicial decision concerning the question of conflicts of interest. Moreover, the entire development of public official disclosure law has been only most recent and certainly lacking in any well settled legal definitions or accepted practice.

The Walker Order fails to establish standards or guidelines to enable men of common intelligence to determine who are and who are not "persons in positions subject to undue influence." This is best evidenced by the fact that even the Board of Ethics, who are charged by the order with the responsibility of defining the term and the positions falling into that category, either could not or would not attempt to do it. Instead they re-delegated that authority to department heads who could not agree among themselves as to who such persons are. This is delegation run riot in a sea of complexion and confusion.

Surely the rights of public employees of the State of Illinois and the Constitution of the United States require more certainty and definiteness than either the Walker Order or the Board's procedures provide.

4. The Walker Order constitutes a violation of Petitioners rights under the First Amendment to the Constitution. Question 49 of the Financial Disclosure Statement requires each employee required to file to disclose the name of each political organization of which he has been an officer, director, employee or trustee since April 1, 1972. The absence of probable cause to compel even limited disclosures of political associations violates the First Amendment. See Gibson vs. Florida Legislative Investigating Committee, 371 U.S. 539, 557 requiring "an adequate foundation for inquiry." This foundation must be established upon independent (*Sweezy vs. New Hampshire*, 354 U.S. 234, 251 266), relevant (*DeGregory vs. New Hampshire Attorney*

General, 383 U.S. 825, 830) and substantial evidence (*Speiser vs. Randall*, 357 U.S. 513 at 529. *Cf. Uphaus vs. Wyman*, 360 U.S. 72, 79).

The baseless intrusion into Petitioners right of privacy authorized by the Courts below would be a novel doctrine even if this case involved the highest state interest — health, safety and welfare. See Camara vs. Municipal Court, 387 U.S. 523; See vs. Seattle, 387 U.S. 541. In the First Amendment area such an intrusion is condemned as a prior restraint. See *Marcus vs. Search Warrants of Property*, 367 U.S. 717; *A Quantity of Copies of Books vs. Kansas*, 378 U.S. 205; *Freedman vs. Maryland*, 380 U.S. 51.

Such inquiries into political associations violate the First Amendment regardless of the occupational groups upon which they are imposed because "precision of regulation must be the touchstone in any area so closely touching our most precious freedom" (*NAACP vs. Button*, 371 U.S. 415 (1963); Aptheker vs. Secretary of State, 378 U.S. 500, 512, 513; *United States vs. Robel*, 389 U.S. 258, 265). They have an "in terrorem" effect (see *Keyishian vs. Board of Regents*, 385 U.S. 589 at 604) since "when one must guess what conduct or utterances will lose him his position, he necessarily will steer far wider of the unlawful zone," (*Speiser vs. Randall*, 357 U.S. 513, 526; *Shelton vs. Tucker*, 364 U.S. 479, 486, 498; *Schneider vs. Smith*, 390 U.S. 17).

There is no logical relevancy between financial disclosure and the political group or organization a public employee may happen to be associated with. Question 49 (Appendix D p. 88) is merely a subtle method of forcing each employee filing to disclose any relationship he may have as an officer, director, employee or trustee of a political organization. It can not pass through the narrow gateway of permissible limitations upon First Amendment rights.

CONCLUSION

The disclosure compelled by the Walker Order, and the financial disclosure statement implementing it, runs roughshod over the constitutional rights of these petitioners and thousands of public employees similarly situated. There is no question but what it violates their rights to due process of law, of equal protection of the law, of freedom of association, of the right to remain silent (by not filing a statement), and lastly, but most importantly, of their right to privacy — their right "to be let alone." With the massive growth of our population and society, privacy has become a paramount importance in the realm of human rights. This is as true of a persons economic interests as it is of his political, religious or philosophical views.

As Professor Clinton Rossiter points out:

> "Privacy is a special kind of independence, which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns, if necessary in defiance of all the pressures of modern society. It is an attempt, * * * to do more than maintain a posture of self-respecting independence toward other men; it seeks an unbreachable wall of dignity and reserve against the entire world." Rossiter, "The Free Man in Free Society," in The Essentials of Freedom, 89 (1960),

and in the words of Mr. Justice Douglas "Once privacy is invaded, privacy is gone." (*Public Utilities Commission vs. Pollak*, 343 U.S. 451 at 469).

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

OPINION OF THE SUPREME COURT OF THE STATE OF ILLINOIS

Illinois State Employees Association, etc., et al. vs. Daniel Walker, etc., et al.

Illinois Association of Highway Engineers, etc., et al. vs. Daniel Walker, etc., et al.

Troopers Lodge No. 41, Fraternal Order of Police, etc., et al. vs. Daniel Walker, etc., et al.

MR. JUSTICE SCHAEFER delivered the opinion of the court:

Three separate actions in the circuit court of Sangamon County were consolidated. Each action challenged the validity of the Governor's Executive Order No. 4 of February 27, 1973, and the financial disclosure statement prepared by the Board of Ethics pursuant to that order. In one case the plaintiffs are individual State employees and the Illinois State Employees Association; in another, individual highway engineers and the Illinois Association of Highway Engineers; and in the third, individual members of the State Highway Police, and Trooper Lodge No. 41, Fraternal Order of Police. Each action purports to be brought in behalf of the named plaintiffs and all employees similarly situated. The defendants in each action are Governor Daniel Walker, Abner J. Mikva, Chairman of the Illinois Board of Ethics, and George M. Burditt, a member of the Illinois Board of Ethics. Since the individuals named as plaintiffs in each action have standing to maintain it, it is unnecessary to inquire into the standing of the plaintiff associations to represent their individual members in these actions.

The trial court heard evidence and entered a judgment sustaining the overall validity of the order and the financial disclosure statement prepared by the Board, but holding that certain portions of the statement were invalid. Both parties appealed, and the appeal was brought to this court pursuant to Rule 302(b).

Executive Order No. 4 created a Board of Ethics, whose members were to serve without compensation. The order provided that the Board should have jurisdiction "over each agency whose vouchers are subject to the approval of the Department of Finance," and it further provided:

> "3. At the commencement of state service and thereafter between April 15 and April 30 of each succeeding year, each of the following persons in each agency subject to the jurisdiction of the Board shall file with the Board a sworn Statement of Economic Interest and a copy of his most recent federal and state income tax returns:
>
> a. Each person appointed by the Governor;
>
> b. Each person who receives $20,000 or more per year from the State; and
>
> c. Each other person whose position is subject to undue influence (as determined from time to time by rule of the Board).
>
> 4. The Statement of Economic Interest shall contain:
>
> a. A current net worth statement, disclosing all assets and liabilities of the person;
>
> b. A statement of income (including capital gains) received by the person during the preceding calendar year, disclosing:
>
> (1) each source of income,
>
> (2) the total amount received from the source, and

(3) the nature of the income transactions involving the source.

To provide this information, pertinent portions of federal or state income tax returns shall be made part of the Statement of Economic Interest;

c. A statement of gifts received by the person during the preceding calendar year, disclosing all gifts from any source having business with or regulated by the agency of the person and all gifts of a value of $50 or more from sources other than members of the person's family;

d. A statement of close economic associations, indicating the person's position with each business or professional entity with which the person is associated as an officer, employee, director or partner or in which he has a substantial interest and identifying those entities which derive substantial income from the State or from professional engagements concerning the State.

5. The Statement of Economic Interest of each person other than one appointed from the public to serve on a Board or Commission shall be open to reasonable public inspection. The Board shall provide by rule for the time, place and manner of inspection.

6. Subject to rule of the Board, the Statement of Economic Interest shall disclose interests of the spouse and immediate family living with the person making the statement."

The order further provided that a false or misleading statement, or failure to file on time or to cooperate with the Board would be ground for disciplinary action, including discharge. The order directed the Board to review the documents filed with it, to make investigations and to report to the Governor upon finding an apparent conflict of interest or other impropriety.

The plaintiffs have attacked the executive order upon many grounds. We consider first those which relate to the power of the Governor to promulgate the order. The plaintiffs first contend that the "order is an unconstitutional usurpation of legislative power." This argument is difficult to comprehend. It seems to be based upon notions of separation of powers radiating from the opinion in *Field v. People ex rel. McClernand* (1839), 2 Scam. (3 Ill.) 79, which involved an effort by the then Governor to remove from office the Secretary of State whom he had appointed with the advice and consent of the Senate. So far as questions of that kind may be involved, or thought to be involved, in this case, the Constitution of 1970 provides in section 10 of article V: "The Governor may remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor." Section 12 of article V of the Constitution of 1870 was to the same effect. See *Wilcox v. People ex rel. Lipe* (1878), 90 Ill. 186, 198.

The plaintiffs then argue:

> "[T]he legislature has already acted in the passage of the Illinois Governmental Ethics Act and its action has been approved by this Court. *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409, (1972). Moreover, the legislature has specifically provided for the conditions upon which a person in public service may be disciplined or discharged. The Illinois Personnel Code, 1971 Ill. Rev. Stat. Ch. 127, Sec. 63(b) 101, et seq. provides that candidates for employment or eligibility under the Code may be rejected by the Director of Personnel only on certain conditions."

It is then asserted that by the executive order the Governor "has rewritten the Personnel Code of Illinois and the Illinois State Police Act and even the Illinois Govern-

mental Ethics Act to impose a new condition of employment in State Government."

These somewhat strident contentions overlook some relevant considerations. Article 5 of the Illinois Governmental Ethics Act, which became effective January 1, 1968, authorized the Governor and each elected State officer in the executive department to promulgate detailed codes of conduct for appointed officers and employees under their jurisdiction (Ill. Rev. Stat. 1971, ch. 127, par. 605-101 *et seq.*), and executive orders applicable to employees in the executive branch had been adopted by Governors Kerner and Ogilvie. Article 5 was no longer necessary, however, after the Constitution of 1970 became effective, and it was repealed by Public Act 77-1806, effective January 24, 1972. (See Ill. Rev. Stat. 1973, ch. 127, par. 605-101 *et seq.*) Since then, the source of authority of the executive branch with respect to ethical standard and statements of economic interests has been section 2 of article XIII, which provides:

> "SECTION 2. STATEMENT OF ECONOMIC INTERESTS
>
> All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government

to establish and enforce ethical standards for that branch." Ill. Const. (1970), art. XIII, sec. 2.

The plaintiffs also contend that the executive order is invalid because it was not submitted to the General Assembly before it became effective. This contention is based upon section 11 of article V, which authorizes the Governor to "reassign functions among or reorganize executive agencies which are directly responsible to him." The section continues: "If such a reassignment or reorganization would contravene a statute, the Executive Order shall be delivered to the General Assembly." The plaintiffs do not identify any statute that they contend has been contravened by the order, and we are aware of none. The authority of the Governor to adopt this order is granted by section 2 of article XIII, which has been set forth.

It is also contended by the plaintiffs that the provision of the order which made its requirements applicable only to agencies whose vouchers are approved by the Department of Finance constitutes a denial of equal protection in violation of the Fourteenth Amendment of the Federal Constitution. We do not agree. Section 10 of "An Act in relation to State finance" (Ill. Rev. Stat. 1973, ch. 127, par. 137 *et seq.*) establishes a system for controlling State expenditures. Code departments, and all boards and agencies, with certain exceptions, may not draw funds from the State treasury unless their vouchers have been approved by the Department of Finance. (Ill. Rev. Stat. 1973, ch. 127, par. 146.) It is unnecessary to analyze each of the agencies excepted in section 10 and elsewhere, other than to note that several are quasi-independent bodies performing certain special functions. We consider that there exists here a rational classification consistent with the purposes of the order.

It is further contended that the classification of persons subject to the order is otherwise vague and indefinite and violated the plaintiffs' rights to due process of the law and equal protection of the laws. The person subject to the order are:

> "a. Each person appointed by the Governor;
>
> b. Each person who receives $20,000 or more per year from the State; and
>
> c. Each other person whose position is subject to undue influence (as determined from time to time by rule of the Board)."

Those persons appointed by the Governor, and those receiving more than $20,000 per year from the State are readily identifiable and these categories appear to embrace that relatively small percentage of all employees of the State who occupy the most responsible positions. For example, of more than 22,000 employees of the Department of Mental Health, about 500 are within the scope of the order.

The third group consists of any "other person whose position is subject to undue influence (as determined from time to time by rule of the Board)." As we understand the position of the plaintiffs, they do not challenge the validity of this aspect of the executive order. It is rather their position that the Board of Ethics acted improperly in formulating its rule. What the Board did was to request heads of each of the departments and agencies involved to indicate those persons in that department or agency whose positions are subject to conflict of interest.

This procedure was adopted pursuant to Rule 2 of the Board, which provides:

> "Each official having supervisory control over agencies subject to the jurisdiction of the Board of Ethics

shall report to the Board of Ethics initially by April 30, 1973, and yearly thereafter no later than March 15, the names and titles of all employees who in the judgment of the official are required by the Governor to file a Financial Disclosure Statement pursuant to the Governor's Executive Order. The Board of Ethics shall review the names and positions recommended for filing by each official to determine the names of those who must file. * * *"

Under this procedure the Board was not surrendering its power and responsibility for the ultimate decision as to what positions were to be regarded as subject to undue influence. The role of the agency head was to make a recommendation, a role which would necessarily require a knowledge of the agency's operations which, initially at least, the agency head, rather than the Board, would be most likely to possess. The agency recommendation, however, remains merely a recommendation: the decision remains that of the Board.

Rule 3 of the Board provides moreover that any employee who is requested to file a financial disclosure statement may object "by submitting to the Board of Ethics in writing a statement that he or she is not in any category of personnel required to file Financial Disclosure Statements under Executive Order No. 4, together with such supporting documents as he or she deem necessary. The Board will notify each such person, in writing, of its decision on the objection. If the Board rejects the objection, the person will be required to file his Financial Disclosure Statement within two weeks of the date on which the objection was rejected or the date on which such statement would otherwise have been due, whichever is later. The due date for filing the Financial Disclosure Statement shall be included in the notice of rejection." The record shows that objections were filed by some em-

ployees, but that because of the issuance of a preliminary injunction in this case, the objections have not as yet been ruled upon. In our opinion, the Board pursued a reasonable course in permitting those having supervisory authority to make the initial determination as to the vulnerability of particular positions, subject to specific review by the Board. We hold that the rights of any affected person to due process of law or to equal protection of the law have not been violated by the procedure employed.

The plaintiffs appear to rely upon section 6 of article I of the Illinois Constitution of 1970 as creating a right of privacy in them with respect to disclosure of their economic interests. We referred to that constitutional provision in *Stein v. Howlett* (1972), 52 Ill. 2d 570, 574, observing, "No limiting definition of the type of privacy is stated in the constitution." Upon further consideration of the language of section 6 and the history of its adoption, we would now qualify that observation.

Section 6 provides: "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means." The changes from the Constitution of 1870 are first, that the word "possessions" is substituted for the word "effects," and second, that the phrase "invasions of privacy or interceptions of communications by eavesdropping devices or other means" is added to the protections against unreasonable searches and seizures. As the section was initially reported to the Constitutional Convention by its Bill of Rights Committee, an argument could have been made that it established an independent right of privacy rooted in the State Constitution, apart from or in addition to the common law right of

privacy recognized in *Leopold v. Levin* (1970), 45 Ill. 2d 434. During its progress through the Constitutional Convention, however, the provision was altered so that as submitted to and approved by the people it was restricted in the manner indicated above. The original form of the provision, together with added material shown by underscoring stricken material by printing and striking, was as follows:

> "The people shall have the right of the people to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of their communications by eavesdropping devices or other means,. or invasions of their privacy shall not be violated, and No warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized." (6 Record of Proceedings, Sixth Illinois Constitutional Convention 210 (hereafter Proceedings).)

Not all members of the court are convinced that this provision should be interpreted as asserting anything beyond protection from invasions of privacy by eavesdropping devices or other means of interception.

But if any doubt exists as to the ultimate meaning of section 6, it is dispelled, insofar as this case is concerned, by the proceedings of the Convention. A major effort was there made to strike section 2 of article XIII, which authorizes economic disclosures, on the precise ground that it would authorize an invasion of a constitutional right of privacy. The proposed amendment was based upon the decision of the Supreme Court of California in the case of *City of Carmel-By-The-Sea v. Young* (1970), 2 Cal. 3d 259, 466 P. 2d 225, 85 Cal. Rptr. 1, a case which also formed one of the major foundation stones of the plain-

tiffs' argument in the present case. The amendment was fully debated and was rejected by a two-to-one vote of the Convention delegates. (See 3 Proceedings 1800-1804.) This court refused to follow the *City of Carmel* case in *Stein v. Howlett*, 52 Ill. 2d at 578.

The notion that a person's ownership of property, real or personal, lies somehow within a protected zone of privacy, is new. For more than a hundred years the revenue acts of this State have provided, and they still provide, that schedules for the listing, under oath, of personal property for tax purposes shall be furnished to each person owning property subject to taxation. (Ill. Rev. Stat. 1973, ch. 120, par. 530.) The property subject to taxation includes all tangible personal property as well as "[a]ll moneys, credits, bonds or stocks and other investments * * *." (Ill. Rev. Stat. 1973, ch. 120, par. 499.) This provision is a continuation of the Revenue Act of 1872.

Both the language of section 2 of article XIII of the Constitution of 1970, and the history of its enactment, require that we reject the notion that the Illinois Constitution of 1970 created a right of privacy which restricts action by the legislative, executive or judicial branches of government with respect to the disclosure of economic interests by State officers and employees.

We come, then, to the contention that the executive order and the rules of the Board of Ethics are invalid because the Constitution of the United States gives to officers and employees of the State of Illinois the right to withhold information relating to their economic interests and their incomes.

For this proposition the plaintiffs rely heavily upon *Griswold v. Connecticut* (1965), 381 U.S. 479, 14 L. Ed. 2d

510, 85 S. Ct. 1678, which involved legislation relating to the use of contraceptives. They argue: "If, in *Griswold*, the State could not invade the zone of privacy that a married couple may enjoy on top of the mattress, we might well question what right the State has to invade the zone of privacy that a married couple might enjoy in what they have tucked inside the mattress." In our opinion this argument debases the *Griswold* opinion, and we find it completely unacceptable. We do not deal in this case with the most intimate relationships of husband and wife or with an effort by the State to control their decisions as to whether and when to have their children. We deal rather with a requirement that the financial affairs of persons who are paid by the public and who occupy positions of high public trust be disclosed.

It is this relation of public employer and public employee that is here being regulated, and the requirements of disclosure of economic assets and interests is neither the only, nor the most important, way in which the legal rights of those who accept public employment are set apart from the legal rights of others. Since the decision of the Supreme Court of the United States in *New York Times Co. v. Sullivan* (1964), 376 U.S. 254, 11 L. Ed. 2d 686, 84 S. Ct. 710, the right of a public official or employee to recover damages for false and defamatory slander and libel charges which may destroy his good name has been sharply curtailed. (See *St. Amant v. Thompson* (1968), 390 U.S. 727, 20 L. Ed. 2d 262, 88 S. Ct. 1323; *Ocala Star-Banner Co. v. Damron* (1971), 401 U.S. 295, 28 L. Ed. 2d 57, 91 S. Ct. 628; Restatement (Second) of Torts (Tent. Draft No. 20) sec. 581A.) In *United Public Workers of America v. Mitchell* (1947), 330 U.S. 75, 91 L. Ed. 754, 67 S. Ct. 556, the Supreme Court stated: "For regulation of employees it is not necessary that the act regulated be anything more than an

act reasonably deemed by Congress to interfere with the efficiency of the public service." (330 U.S. 75, 101, 91 L. Ed. 754, 773.) More recently, in *United States Civil Service Com. v. National Association of Letter Carriers* (1973), 413 U.S. 548, 556, 37 L. Ed. 2d 796, 804, 93 S. Ct. 2880, 2886, the Supreme Court "unhesitatingly reaffirm[ed]" the *Mitchell* case in the course of its opinion sustaining the Hatch Act prohibition of political activity on the part of Federal employees. In the *Letter Carriers* case the court made the following comments:

> "But, as the Court held in *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968), the government has an interest in regulating the conduct and 'the speech of its employees that differ[s] significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the [government], as an employer, in promoting the efficiency of the public services it performs through its employees.' Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act." 413 U.S. 548, 564-565, 37 L. Ed. 2d 796, 808-809, 93 S. Ct. 2880, 2890; *Broadrick v. Oklahoma* (1973), 413 U.S. 601, 37 L. Ed. 2d 830, 93 S. Ct. 2908.

We conclude, as did the Supreme Court of Washington in *Fritz v. Gorton* (1974), 83 Wash. 2d 275, 517 P. 2d 911, *appeal dismissed for want of substantial Federal question* (May 28, 1974), — U.S. —, 41 L. Ed. 2d 208, that financial disclosures required of State employees do not deprive them of their right of privacy guaranteed by the Consti-

tution of the United States. And we concur in the following observations of the trial judge in the case before us:

> "As noted, in the balancing of the individual employee's fundamental right to privacy and the state's compelling need for efficient, ethical government, the state's interest predominates. To promote its interest, the state is requiring complete financial disclosure. Such a means is substantially related to the end and is not overbroad. While full financial disclosure is burdensome, anything less would be ineffective in accomplishing the goal. The disclosure of only the sources of significant business interests and substantial amounts of income, as under the Ethics Act [Ill. Rev. Stat. 1973, ch. 127, par. 601 *et seq.*], is useful as far as it goes, but the information exempted is such that much corruption may go undetected. It is misleading, and ultimately undermining of public confidence, to institute a disclosure program having exemptions as broad as the coverage. The inclusion of dollar amounts is justified because it allows for detection of many more types of unethical conduct."

The trial court found some of the disclosure provisions unsatisfactory, however, and we now turn to a consideration of those specific determinations. The first concerns the required disclosure of the financial interests of a spouse and members of the immediate family of a State employee living with him. The trial court held that the State may not require disclosure from such a person of financial interests "which are unrelated to the State employee." The difficulty with this position is the same as that which was pointed out in *Stein v. Howlett* (1972), 52 Ill. 2d 570, 578: "It would be an anomaly to enact a statute, designed to eliminate conflicts of interest between public trust and private gain, in such manner that the person affected is permitted to decide when a financial interest relates to his public employment."

The trial court also took the position that the State must "construe the requirement for disclosure with respect to the spouse and members of the immediate family of the employee living with him to mean financial interests constructively controlled by the employee and/or property, the title to which is held for the employee." In *Stein v. Howlett* a similar reference in the Governmental Ethics Act to "constructive control" was challenged on the ground of vagueness, but the court found the phrase "sufficiently explicit to inform those who are subject to it of the conduct on their part to which it applies." (52 Ill. 2d 570, 579-580.) That determination, however, was not a holding that the State could go no further. Both Rule 68 of the rules of this court, which requires judges to file declarations of economic interest, and the administrative order which implements that rule, require disclosure of economic interests of the judge "and members of his immediate family (spouse and minor children residing with him)." (50 Ill. 2d R. 68; *cf.* Report of the Committee on Court Administration, Annual Report of the Director of the Administrative Office of the United States Courts (1970), at 7-8.) Neither the rule of this court nor the implementing order refers to "constructive control," but we are not persuaded that the absence of that phrase invalidates them. Because of the danger of conflicts of interest of an indirect character, as well as the obvious possibility of subverting the loyalty of an employee through gifts to his spouse, we hold that the executive order and the rules of the Board need not be qualified as the trial court required.

The trial court also held that question 49 of the Financial Disclosure Statement was overly broad and that employees could not be required to answer it. The reason for this conclusion is that the question was thought by the trial court to go beyond economic associations. We do not agree

with this interpretation of the question. The instructions to employees concerning this question state:

"49. Enter here the names of all organizations other than the State in which you have a substantial interest. Indicate your position in the organization and your payment, if any, from the organization. Indicate approximately the amount of income, if any, that the organization receives from the State."

Question 49 and the related questions are as follows:

49. List each partnership, trust, political organization, local governmental unit, professional service corporation, or other (including non-profit) association of which you personally have been an officer, employee, director, trustee or partner since April 1, 1972.

Association	Your Position	Your Payment	Approximate income Association Receives from State
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Is there a continuation sheet? YES .... NO ....

50. Have you or any association listed in 49 above represented anyone before State agencies since April 1, 1972? YES .... NO ....

If "yes" list each agency and the type of matter involved. Itemize:

Agency	Type of matter
.....	.....
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES .... NO ....

> 51. If any person or entity in question 49 receives over $500 from the State, check "yes" and explain on a separate sheet of paper for each person or entity (a) the nature of the income transaction (e.g., "sale of concrete to the State"), and (b) the relationship, if any, of your agency to this transaction.
>
> YES .... NO ....

The tone of questions 49, 50 and 51 strongly suggests a limitation to economic interests. To the extent that question 49 and the related questions go beyond economic interests, they are, in our opinion, beyond the authority of the Board under Executive Order No. 4, the relevant portion of which is as follows:

> "A statement of close economic associations, indicating the person's position with each business or professional entity with which the person is associated as an officer, employee, director or partner or in which he has a substantial interest and identifying those entities which derive substantial income from the State or from professional engagements concerning the State."

We hold therefore that these questions must be construed as referring only to economic associations. As so limited they are consistent with the executive order and violate no constitutional rights.

The trial judge stated in his opinion that the requirements that complete Federal and State income tax returns be filed for confidential use is vulnerable to attack for overbreadth, saying:

> "A number of individuals itemize deductions, listing such items as medical expenses and charitable contributions. Compelling employees to provide such information for purposes of ethical enforcement cannot be justified by state need. It is a clear invasion of privacy."

And the judgment order of the trial court included the following paragraph:

> "9. Defendants may not require the filing of that part of the employee's income tax returns which show itemized deductions where this would result in the disclosure of wholly private associations which are wholly unrelated to their employment."

Executive Order No. 4 requires the employees to whom it applies to file with the Board (1) a sworn statement of economic interest, and (2) a copy of his most recent Federal and State income tax returns. The order also provides that the statement of economic interest of each person shall be open to reasonable public inspection, and that the Board shall provide by rule for the time, place and manner of inspection.

With respect to public inspection and disclosure the Board has drawn a clear distinction between statements of economic interest and income tax returns. The former were to be open to public inspection under conditions prescribed in a proposed rule, the implementation of which was apparently impaired by the issuance of the temporary injunction in the trial court. Rule 7 of the rules of the Board, however, expressly states that income tax returns, including all schedules and attachments, shall not be open to public inspection at all. Paragraph 4 of Executive Order No. 4 does provide that portions of Federal or State income tax returns shall be made part of the Statement of Economic Interest, but only those portions which are "pertinent" to income transactions.

So far as income tax deductions are concerned, therefore, any claimed "invasion of privacy" amounts to no more than the required disclosure by an employee to his employer, the State of Illinois, of information which the employee

has already disclosed to the Federal government by filing his income tax return. We are unaware of any constitutional requirement that income tax returns be kept secret. Any Congressional provision currently limiting disclosure of those returns could, in our opinion, be repealed without impairing the validity of the tax. The treatment now given by Congress to this particular form of taxation is exceptional. In these circumstances we do not believe that the required filing of income tax returns represents any constitutionally significant impairment of the privacy of the individual employee affected by the executive order.

The problem as we see it is not one of constitutional right. The trial judge framed his conclusion in terms of "overbreadth" of the requirement. In this context an "overly broad" disclosure means a disclosure of more matters or more detail than the judge thinks necessary to accomplish the purpose of one of the other branches of government. Whether a particular disclosure is necessary to accomplish the purposes of the executive order is primarily a matter for the executive branch to determine. Nothing in this record justifies us in concluding that its determination is unreasonable.

To the extent that the judgment of the circuit court sustains the validity of the executive order and the action of the Board, it is affirmed, and to the extent that it holds them invalid, it is reversed.

Affirmed in part and reversed in part.

MR. JUSTICE RYAN, dissenting:

I dissent from the majority opinion because I believe that the Illinois Constitution of 1970 creates a right of privacy which is violated by this financial disclosure scheme.

As originally presented to the constitutional convention

by the Bill of Rights Committee, section 6 of article I was worded as follows:

> "The right of the people to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, interceptions of their communications, by eavesdropping devices or other means, or invasions of their privacy shall not be violated." 6 Proceedings 29.

In its written explanation of this proposal, the Committee stated:

> "Forty-five state constitutions have provisions substantially similar to the existing Section 6 of the Bill of Rights ***. The new section supplements the existing language in *two* important respects. It adds a right against 'interceptions of their communications by eavesdropping devices or other means' and *it adds a right against 'invasions of their privacy'*. Both additions treat subjects in the forefront of present public concern, although neither is found in many state constitutions. ***
>
> The changes incorporated in this new provision are as follows:
>
> (1) The words 'other possessions' are substituted for the word 'effects' in the first clause. ***
>
> (2) The words 'interceptions of their communications by eavesdropping devices or other means' have been inserted in the first clause. This addition is intended to create a right in respect to interception of communications that is akin to the prohibition against 'unreasonable searches and seizures'. ***
>
> (3) The words 'invasions of their privacy' were inserted in the first clause to protect people against invasions of their privacy. It is doubtless inevitable that any person who chooses to enjoy the benefits of living in an organized society cannot also claim the privacy he would enjoy if he were to live away from

> the institutions of government and the multitudes of his fellow men. It is probably also inevitable that infringements on individual privacy will increase as our society becomes more complex, as government institutions are expected to assume larger responsibilities, and as technological developments offer additional or more effective means by which privacy can be invaded. In the face of these conditions the Committee concluded it was essential to the dignity and well being of the individual *that every person be guaranteed a zone of privacy in which his thoughts and highly personal behavior were not subject to disclosure or review.* The new provision creates a direct right to freedom from such invasions of privacy *by government or public officials.*" (Emphasis added.) 6 Proceedings 29 through 32.

In presenting this section to the convention on behalf of the Bill of Rights Committee Delegate Dvorak explained that the section contained three basic concepts: first, searches and seizures; second, eavesdropping and wiretapping; and third, the right to privacy. In discussing the right to privacy he stated:

> "The cases that I have noted that deal with eavesdropping have pretty much intruded into the area of privacy because now the area of privacy that once was thought to be a complete area in and of itself mostly is the reason given for why eavesdropping, wire-tapping, and bugging activities are unconstitutional. *But there is the area of privacy still existing in very particular instances.* For instance, we have now the concept of a general information bank whereby the state government or the federal government can take certain pertinent information about each and every one of us based on, for instance, our social security number — know our weight, height, family ages, various things about us — and this is not acceptable to — was not acceptable — or the theory or the thought of such a thing — was not acceptable to the majority of our com-

mittee in approving section 6." (Emphasis added.) 3 Proceedings 1525.

I find it clear from this discussion and from the language of section 6 itself that as originally proposed that section created a right to privacy independent of the prohibitions against unreasonable searches and seizures and wiretapping. After lengthy debate section 6 was approved and forwarded to the Committee on Style, Drafting and Submission. That Committee rearranged the wording of section 6 and placed the provision concerning invasions of privacy before instead of after the provision concerning interceptions of communications by eavesdropping devices or other means. The majority of this court believes that the effect of this revision was to significantly limit the scope of the right to privacy to the area of eavesdropping. However, this interpretation of the stylistic alteration in the language of section 6 is inconsistent with the Committee's own interpretation of their work. In explaining the revisions of section 6 to the convention the Committee on Style, Drafting and Submission stated that "no substantive change is made." 6 Proceedings 217.

Moreover, in the "Address to the People" adopted by the convention on September 2, 1970, and included in the information concerning the constitution distributed to the electorate before the referendum on the adoption of the 1970 Constitution, we find the following statement concerning the Bill of Rights article:

> "*** Individual rights protected by the present Constitution are retained. There are additional new protections. *** Unreasonable invasions of privacy are prohibited; ***." 7 Proceedings 2673.

And in the explanation to the voters of the revised version of section 6 the convention stated:

> "This is an amended version of Article II, Section

> 6 of the 1870 Constitution expanded to include guarantees of freedom from unreasonable eavesdropping *and invasions of privacy.*" (Emphasis added.) 7 Proceedings 2683.

This history of the origins of section 6 leads to what I consider the inescapable conclusion that our constitution creates a right to privacy independent of the constitutional protection against searches and seizures and wiretapping.

This conclusion is buttressed by our decision in *Stein v. Howlett,* 52 Ill. 2d 570. In *Stein* we were confronted with a number of challenges to the Illinois Governmental Ethics Act (Ill. Rev. Stat., 1971 Supp., ch. 127, par. 604A—101 *et seq.*), including a contention that the Act was an unconstitutional invasion of privacy. The majority opinion in this case makes scant reference to the language of *Stein.* Immediately preceding the sentence which the majority quotes from *Stein* we find this language:

> "The confirmation of the right of privacy as a constitutional right is found in section 6 of article I of the 1970 constitution which expressly states, for the first time in our State charters, that people 'have the right to be secure in their persons, houses, papers and other possessions against *** *invasions of privacy*' ***." (Italics in reported opinion.) 52 Ill. 2d at 574.

Then following a detailed analysis of the statute under consideration we stated in *Stein:*

> "The purpose of the legislation supports the necessity for broad statutory coverage in this area. We believe that the statute as cast reflects the compelling governmental interest which is paramount to the rights of the individual, and that the statute is not overbroad as *an unconstitutional invasion of privacy.*" (Emphasis added.) 52 Ill.2d at 578.

Our detailed analysis would have been unnecessary if no right of privacy in one's financial affairs had been created

by section 6 of article I of the 1970 Constitution. Therefore, I believe that in *Stein* not only did we recognize but also we impliedly held that such a right was created by section 6. The majority opinion has not effectively dealt with *Stein*. We must either hold that our constitution creates a right of privacy embracing one's financial affairs or we must overrule *Stein* to the extent that it so holds.

The majority believes that any doubt existing as to the ultimate meaning of section 6 has been dispelled by the rejection by the constitutional convention of an amendment which would have stricken section 2 of article XIII which authorizes economic disclosures. In support of the amendment one of its co-sponsors stated that he opposed section 2 of article XIII because he believed that it is an invasion of the right of privacy and referred to the discussion by the California Supreme Court in *City of Carmel-by-the-Sea v. Young*, 2 Cal. 3d 259, 466 P.2d 225. In referring to that decision the delegate stated that it isn't all disclosure that the court held to be within the unconstitutional category. In concluding he stated: "I suggest that this is a matter for legislation and does not belong within the constitution, and that I therefore urge support of this amendment." (3 Proceedings 1800.) It should be remembered that this amendment was offered at the time that the original section 2 provided "Each candidate for or holder of a state office created by this Constitution shall declare his and his immediate family's income, the sources thereof, their assets and liabilities, and any significant non-economic interest." 6 Proceedings 605.

Before the amendment to delete section 2 was debated that section had been amended and the words "declare his and his immediate family's income, the source thereof, assets and liabilities, and any significant non-economic interest" had been deleted and in lieu thereof the words

"file a statement of interest, which shall include a list of significant economic and noneconomic interests, as prescribed by law" had been inserted. (3 Proceedings 1772.) Thus when the proposal to delete section 2 was debated the delegates would have had no way of knowing the nature of the disclosures which would subsequently be required by statute and whether or not they would infringe upon the right of privacy. As above noted the delegate that spoke in favor of the deletion of all of section 2 acknowledged that it isn't all disclosures that fall within the category of being unconstitutional as an invasion of the right of privacy. It is further suggested that the delegates suggestion that it is a matter for legislation and does not belong within the constitution may well have been thought by the other delegates to have already been accomplished by the previously adopted amendment to section 2. Furthermore the other co-sponsor of this amendment in his closing summation urging its adoption made no reference at all to the right of privacy. After having read and reread the debates relating to section 2 of article XIII I can find no basis for concluding that the defeat of the amendment to delete all of section 2 was based upon the rejection of the idea that section 2 invaded the right of privacy. The mere mention of the right of privacy by one delegate speaking on behalf of the amendment, which comment was not entirely relevant, does not indicate to me that the right of privacy question was the reason for the rejection of the amendment.

I also believe, contrary to the majority, that personal financial affairs are within the realm of the right to privacy created by the Federal Constitution. In *Roe v. Wade,* 410 U.S. 113, 152, 35 L. Ed. 2d 147, 176, 93 S. Ct. 705, the United States Supreme Court observed that the roots of the right to privacy have been found in the First Amend-

ment, the Fourth and Fifth Amendments, the Ninth Amendment, and in the penumbras of the Bill of Rights. The court concluded in *Roe* that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty" are included in this guarantee of personal privacy. Although the United States Supreme Court has not yet decided whether a person's financial affairs fall within the protected right of privacy under the Federal Constitution, it was recently stated by Mr. Justice Powell of that court: "Financial transactions can reveal much about a person's activities, associations, and beliefs. At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy." *California Bankers Association v. Shultz*, — U.S. —, —, 39 L. Ed. 2d 812, 850, 94 S. Ct. 1494, 1526 (Powell, J., concurring, joined in by Blackmun, J.).

Although I believe that section 6 of article I creates a right to privacy embracing one's financial affairs, I also realize that this right is not absolute. Regulations limiting this right may be justified by a compelling State interest but such limitations must be narrowly drawn to express only the ligitimate State interests at stake and the compelling interest may not be achieved by unnecessarily broad measures. *Roe v. Wade*, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705; *Stein v. Howlett*, 52 Ill.2d 570; *Bates v. City of Little Rock*, 361 U.S. 516, 4 L. Ed. 2d 480, 80 S. Ct. 412.

The obvious purpose of Executive Order No. 4 is to instill in the public trust and confidence in the State government and to disclose or prevent possible conflicts of interest which may involve State employees. As we stated in *Stein* such a purpose reflects a compelling State interest and justifies a limited intrusion into the financial privacy of the employees affected. However, even though the State has a compelling interest in this area, and has more latitude

in regulating the affairs of its employees than those of private citizens (*Broadrick v. Oklahoma,* 413 U.S. 601, 37 L. Ed. 2d 830, 93 S. Ct. 2908; *United States Civil Service Com. v. National Ass'n of Letter Carriers,* 413 U.S. 548, 37 L. Ed. 2d 796, 93 S. Ct. 2880, a balance must still be struck between the legitimate objectives of the State and the privacy expectations of the employee. *Pickering v. Board of Education,* 391 U.S. 563, 20 L. Ed. 2d 811, 88 S. Ct. 1731.

As a basic premise I agree with the State that a person's private financial affairs may exert an influence on the performance of his official functions. This would most obviously be true if an employee had a financial interest in a business or organization having dealings with the government agency employing him. Inquiry directed to disclosing such potential conflict is certainly proper. Furthermore, because financial ties to organizations or businesses apparently unrelated to a person's official position might be a potential source of conflict, inquiry into such affairs also seems proper. As we noted in *Stein,* "It would be an anomaly to enact a statute, designed to eliminate conflicts of interest between public trust and private gain, in such manner that the person affected is permitted to decide when a financial interest relates to his public employment. The purpose of the legislation supports the necessity for broad statutory coverage in this area." (52 Ill.2d at 578.) This is particularly true of a disclosure scheme which is designed not only to disclose actual conflicts, but also to instill public confidence in government. Achieving this goal would be difficult if substantial financial ties of public employees were not disclosed. Executive Order No. 4 and the Financial Disclosure Statement issued to implement the Order, however, are not limited to an inquiry into financial ties which might conflict with an employee's official

duties. The Order demands disclosure of every aspect of a person's financial life. It requires that the Statement include "a current net worth statement, disclosing *all* assets and liabilities of the person." (Emphasis added.) The Order also requires that the Statement contain a statement of income (including capital gains) received during the preceding calendar year, disclosing: "(1) *each source* of income, (2) the total amount received from the source, and (3) the nature of the income transactions involving the source." (Emphasis added.) Subject to rule of the Board, the Statement shall also disclose the interests of the spouse and immediate family living with the person making the statement.

It should be remembered, that this Financial Disclosure Statement, as provided by the Executive Order, shall be open to reasonable public inspection. The Order authorizes the Board to provide by rule for the time, place and manner of the inspection of these documents.

The Order and the Financial Disclosure Statement are designed to reveal an employee's net worth. Since these statements are open to public inspection the State employee must bare to the world the minute details of his financial affairs for whatever use the curious may wish to make of this information. I do not believe that this expansive intrusion into the privacy of the employees is necessary to achieve the State's legitimate objectives. It is not necessary that the public know the net worth of an employee, since there is no reason to believe that a wealthy public servant will be less truthworthy than one of more modest means or *vice versa*. It is therefore unnecessary that the value of personal assets not in the form of business interests be disclosed.

While the State has a legitimate interest in knowing

the nature of an employee's financial holdings in corporations or business ventures which might possibly influence his conduct, I do not think it is necessary that the dollar value of those holdings be revealed. The disclosure of the financial relationship by itself will illuminate areas of possible conflicts of interest. For purposes of general disclosure the State's interest in discovering the monetary extent of these interests is outweighed by the employee's interest in privacy. Thus, I am of the opinion that the requirement of the Order that an employee list the actual dollar value of outside income or business interests constitutes an unreasonable intrusion upon the privacy of the individual and is invalid.

Furthermore, for the same reason I find offensive the requirement of Executive Order No. 4 that a copy of the employees' State and Federal income tax returns be filed with the statement. Although it is true, as the majority observes, that under current Rule 7 of the Board of Ethics these returns are not open to public inspection, nothing in the Executive Order prevents an alteration of the rules by the Board to permit public inspection or limited public inspection of these income tax returns.

In concluding that this disclosure scheme does not infringe upon the right of privacy of State employees, the majority cites as support *Fritz v. Gorton* (1974), 83 Wash. 2d 275, 517 P.2d 911. I find that decision to be of little assistance to the majority opinion because the financial disclosure scheme which was upheld in that decision by the Supreme Court of Washington bears little resemblance to the scheme before us. The Washington disclosure scheme requires much more general disclosure than that required under this Order. Section 24 of the Washington law requires elected officials to disclose financial interests and obligations only in general categories. Under that scheme

it would not be necessary to disclose one's exact net worth. The Washington Supreme Court considered this aspect of the disclosure requirement in determining whether the right of privacy was invaded. The court observed:

> "The provisions of section 24 do not sweep so broadly as to be constitutionally impermissible. Section 24 does not cavalierly mandate a picayune itemization of personal affairs, but requires only the listing of financial data and relationships with amounts to be designated, not in specific amounts, but by general categories of varying monetary degree." (517 P.2d 925.)

Because of these important differences in the disclosure requirements of the Washington law, the decision of the Washington Supreme Court sustaining that law is of no persuasive value here.

I must also disagree with the statement of the majority that, "whether a particular disclosure is necessary to accomplish the purposes of the Executive Order is primarily a matter for the executive branch to determine." While this statement is a natural conclusion from the majority position that there exists no right to privacy in one's financial affairs, believing as I do that such matters are embraced by a constitutional right to privacy, I must conclude that deciding the validity of disclosure provisions is primarily a function of this court.

For these reasons I believe that Executive Order No. 4 is an unconstitutional invasion of the right of privacy of the State employees who are subject to its disclosure requirements.

MR. JUSTICE GOLDENHERSH joins in this dissent.

APPENDIX B

OPINION OF THE TRIAL COURT

Illinois State Employees Association, etc., et al, vs. Daniel Walker, etc., et al.	No. 365-73
Illinois Association of Highway Engineers, etc., et al, vs. Daniel Walker, etc., et al.	No. 366-73
Troopers Lodge No. 41, Fraternal Order of Police, etc., et al. vs. Daniel Walker, etc., et al.	No. 379-73

COURTS OPINION

This court is called upon to decide the constitutionality of Executive Order Number 4 of Governor Dan Walker (1973). The Order (called the Ethics Order) applies to state employees under the jurisdiction of the Governor who earn $20,000 or more per year, those appointed by the Governor, and those whose positions are subject to undue influence. The financial disclosure requirements are the most sweeping in the country and exceed the requirements of any state or federal statute, federal executive order or model statute coming to my attention. I consider the issues to be of basic importance to both the individual liberties of those affected and the concept of public confidence in an honest and impartial state government.

After careful and deliberate consideration, I have concluded that the Ethics Order is valid under the Constitution of the United States and the Constitution of Illinois of 1970, provided the rights to privacy are protected as must as is at all possible, consistently with accomplishing disclosure in the public interest. While generally affirming the Order and Governor Walker's power to issue it, I have done so qualifiedly and with certain exceptions, so that individual lib-

erties are protected as much as possible. Those exceptions are set forth hereafter.

The heart of the decision requires the court to consider the right of the individual "to be let alone" vis a vis the compelling interest of the state in insuring, as far as possible, an honest government and one inspiring confidence. In my opinion, the individual public employee's right of privacy must yield to the paramount or compelling interest of the state as stated in the Ethics Order. While the law and constitution require that reasonable disclosure in the public interest take precedence, this is true as already noted only to the extent necessary to accomplish the stated objectives. I have carefully considered the law and facts of this case and have limited the scope of privacy intrusions to those and only those related to the object of the Order. Realizing that the Ethics Order under attack and, to a lesser extent the judicial decision upon its validity, will have far reaching effects upon the future long range conduct of government, I have given careful and thorough thought to it and have set forth my opinion at length. That opinion follows.

FACTS

This is an action for declaratory judgment wherein plaintiffs seek a declaration that Executive Order 4 (1973) promulgated by Governor Walker on February 26, 1973, is illegal, unconstitutional, and unenforceable against plaintiffs and persons similarly situated in state government.

By its terms, the Executive Order directs that certain state employees annually file a sworn Statement of Economic Interests together with copies of their state and federal income tax returns.

The Order directs that the Statement of Economic Interests contain the following information:

a. Current net worth

b. All assets and their value

c. All liabilities and amount owing

d. Income, including capital gains received, itemizing:
   (1) Each source of income,
   (2) Total amount from each source, and
   (3) Nature of the income transaction.

e. Gifts received, itemizing:
   (1) Gifts from any source having business with, or being regulated by, the agency of the employee filing, and
   (2) Gifts valued at $50 or more from sources other than members of the employee's family.

f. Close economic associations, indicating:
   (1) Position with each business or professional organization of which employee is an officer, employee, director, or partner, or in which he has a substantial interest, and
   (2) Which of these organizations derive substantial income from the state or from professional engagements concerning the state, and
   (3) A form implementing the order requires the employee to list "each partnership, trust, political organization, local governmental unit, professional service corporation, or other association of which you . . . have been an officer, employee, director, trustee, or partner since April 1, 1972."

The employee must also disclose the same financial information as to his spouse and immediate family living with him. The organizational associations need not be listed.

By rule established pursuant to the Order, persons who have holdings in a "blind trust" must sign an authorization directing the trustee to make known the holdings in the trust.

The Statements of Economic Interests are to be "open to reasonable public inspection," except that Statements by persons "appointed from the public to serve on a Board or Commission" will be kept confidential. All tax returns are to be kept confidential, as are (by rule) trustees' reports of holdings in "blind trusts." No rules have been adopted defining what constitutes "reasonable" public disclosure.

The state employees required by the Order to file Statements fall into three categories of employees who work in "agencies whose vouchers are approved by the Department of Finance." The three categories of employees who must file are: "a. Each person appointed by the Governor; b. Each person who receives $20,000 or more per year from the State; and c. Each person whose position is subject to undue influence (as determined from time to time by rule of the Board /of Ethics)."

Executive Order 4 creates a three-member Board of Ethics to be appointed by, and to serve at the pleasure of, the Governor. The Board has made the following determination relating to which employees are in positions "subject to undue influence":

> Each official having supervisory control over agencies subject to the jurisdiction of the Board of Ethics shall report . . . the names and titles of all employees who in the judgment of the official are required . . . to file. . . . The Board shall review the names and positions recommended for filing . . . to determine the names of those who must file.

Pursuant to this rule, lists of names and classifications

were submitted by supervisory officials, were examined by the Board, were discussed in some cases with the agency heads, and then finally adopted.

The Board of Ethics formulated a nine-page Financial Disclosure Statement which was initially sent to approximately 6,800 persons in 80 to 100 agencies. Failure to file an accurate, complete form by May 30, 1973 would, according to the Order, subject the employee to "disciplinary action including discharge." A procedure is provided for objecting that one is not in any category of personnel required to file under the Order. This procedure was not explained to employees in the Board's instructions to employees, however; and many filed without knowing that such a procedure was available. By rule, the making of a false or misleading statement or an omission in a document or failure to cooperate with the Board of Ethics shall likewise be ground for disciplinary action, including discharge.

The extent of disclosure required under this Order exceeds that required by any state or federal statute, federal executive order, or model statute that has come to the Court's attention.

The Order differs from the Governmental Ethics Act, as amended by House Bill 3700 of the 77th General Assembly (P.A. 77-1806), Supp. to Ill. Rev. Stat. 1971, ch. 127, par. 601-101 *et seq.*, which was upheld in *Stein v. Howlett*, (1972), 52 Ill. 2d 570, app. denied — U.S. —, 41 LW 3636.

The Ethics Act was legislation, of course; whereas the Executive Order is by authority of the Governor alone. The Ethics Act requires that the sources (only) of substantial amounts of income and significant business interests be disclosed; Executive Order 4 (1973) calls for itemized dollar amounts and sources of all assets, liabilities, income,

and certain gifts. Finally, the Ethics Act requires the reporting of the sources of substantial interests held by spouses or others only if these interests are constructively controlled by the person disclosing; whereas the Order calls for disclosure of all economic interests of spouses and of members of the immediate family living in the home.

Plaintiffs include three associations of state employees and individual members, including an engineer receiving more than $20,000 per year from the State, a state trooper classified as a person whose position is subject to undue influence, and the spouse of an employee required to file.

Plaintiffs challenge the Executive Order on the following grounds: (1) It is an unconstitutional invasion of the right of privacy; (2) It is beyond the power of the Governor; (3) It violates statutes and the Illinois Constitution; (4) It unconstitutionally discriminates between members of the same class; (5) It is unconstitutionally vague; and (6) Its administration violates due process of law.

I.

The right of privacy has been called "the right to be let alone — the most comprehensive of rights and the right most valued by civilized man." *Olmstead v. United States* (1928), 277 U.S. 438, 478, 72 L.Ed. 944, 48 S.Ct. 564 (Brandeis, J., dissenting). One of the outstanding characteristics of a society which honors individual rights is a respect for privacy. It is this as much as any quality that differentiates a free society from a totalitarian state.

The 1970 constitution of the State of Illinois explicitly guarantees the right of all persons to be "secure in their persons, houses, papers and other possessions against unreasonable . . . invasions of privacy." Section 6, Article I. The debates of the constitutional convention indicate

the intention of the framers to apply to privacy the same standards of reasonableness that apply to searches and seizures under the Fourth Amendment to the United States Constitution. Sixth Constitutional Convention, Record of Proceedings, p. 1529.

One convention delegate has written, "In an age when people are . . . made to fear by the intrusion in their lives, it is good to know that our state has gone beyond any other in strengthening the privacy of the individual." Gertz, For The First Hours of Tomorrow: The New Illinois Bill of Rights. Consequently, it is clear that the right to privacy is considered to be fundamental in the State of Illinois.

Individual privacy has also been found to be protected, increasingly in recent years, by the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. It is guaranteed directly or by the "penumbras formed by emanations" from these Amendments. *Roe v. Wade* (1973), — U.S. —, 34 L.Ed. 2d —, 93 S.Ct. 705, *United States v. United States District Court* (1972), 407 U.S. 297, 32 L.Ed. 2d 752, 92 S.Ct. 2125, 2134, *Griswold v. Connecticut* (1965), 381 U.S. 479, 14 L.Ed. 2d 510, 85 S.Ct. 1678, *Katz v. United States* (1967), 389 U.S. 347, 350, 19 L.Ed. 2d 510, 88 S.Ct. 507, *Boyd v. United States* (1886), 116 U.S. 616, 29 L.Ed. 746, 6 S.Ct. 524, *United States v. Morton Salt Co.* (1950), 338 U.S. 632, 651, 94 L.Ed. 401, 70 S.Ct. 357, 369, *Federal Trade Commission v. American Tobacco Co.* (1924), 264 U.S. 298, 305-306, 68 L.Ed. 696, 44 S.Ct. 336, 337, *NAACP v. Alabama* (1958), 357 U.S. 449, 2 L.Ed. 2d 1488, 78 S.Ct. 1163, *Camara v. Municipal Court* (1967), 387 U.S. 523, 539, 18 L.Ed. 2d 930, 87 S.Ct. 1727.

Privacy as to one's intimate financial affairs has been recognized as a fundamental personal right to protected against overbroad governmental intrusion in a variety of

settings. *Stein v. Howlett* at 578, *City of Carmel-by-the-Sea v. Young* (1970), 2 Cal. 3d 259, 85 Cal. Reptr. 1, 466 P. 2d 225, 277, *Stark v. Connolly* (1972), 347 F.Supp. 1242 (N.D. Calif.)

Privacy of personal finances is a fundamental right because public disclosure affects the dignity of the person; disclosure in and of itself recalls the indignity of the "means test." A person's financial status is closely linked to reputation, personality, and self-esteem. Even in the absence of wrongdoing, exposure may lead to embarrassment, to harassment and solicitation by others, and "could expose the public officer . . . to various criminal elements. . . ." *City of Carmel-by-the-Sea v. Young,* at 466 P. 2d at 233

The right to privacy is not absolute. Where fundamental rights are involved, however, regulation limiting those rights may be justified only by a compelling state interest. *Roe v. Wade, Kramer v. Union Free School District,* (1969), 395 U.S. 621, 627, 23 L.Ed. 2d 583, 89 S.Ct. 1886.

In this case, the state's interest is compelling and, on balance, justifies limitations on the right to privacy. The state's interest in the avoidance of conflicts of interest between the government and its employees, the disclosure of abuse of office, and the installation of trust and confidence in state government outweighs the rights of the individual employees. The paramount nature of the state's interest as to disclosure of finances by public servants has been recognized by the legislature in the passage of the Ethics Act, by the Illinois Supreme Court in the case of *Stein v. Howlett,* 578, and in the standards of judicial conduct, including required declarations of economic interest. Illinois Supreme Court Rules, Rule 61-71.

Those who conduct public business must be governed

by the highest standards of ethical behavior. Financial disclosure by public employees is designed to increase governmental economy and efficiency, promote the equal treatment of equal claims, deter avoidable conflicts of interest, prevent the use of public office for private gain, and inspire public confidence in state government. In short, it is in the public interest. Full disclosure, as provided for in Executive Order 4 (1973) is aimed at the prevention as well as discovery of all forms of abuse — from the acquisition of bribes, kickbacks, gifts, and loans to the exercise of governmental discretion in the advancement of the employee's individual financial interests. In these days of high suspicion and disillusionment concerning the conduct of public officials, the promotion of public confidence in the integrity and impartiality of government is a compelling need indeed, for free government depends on the trust and consent of the governed.

Even where, as here, a compelling state interest outweighs a fundamental private right, corrective measures must be "narrowly drawn to prevent the supposed evil, even where there is a legitimate governmental purpose." *Cantwell v. Connecticut* (1940), 310 U.S. 296, 307, 84 L. Ed. 1213, 60 S. Ct. 900, and no less ominous alternative means may be open to accomplish the state interest. *Shelton v. Tucker* (1960), 364 U.S. 479, 488, 5 L. Ed. 2d 231, 81 S. Ct. 247, 252.

The question, then, is whether the disclosure required by Executive Order 4 (1973) is overbroad and thus unnecessarily invades the fundamental right of privacy, even in light of the compelling state interest in disclosure. The answer involves the careful weighing of the right of financial privacy for public employees as against such disclosure in the public interest.

There is no doubt that the state may more broadly regulate and inquire into the activities of its employees than into those of private citizens. "The problem . . . is to arrive at a balance between the interest of the/employee/ as a citizen . . . and the interest of the/state/ as an employer in promoting the efficiency of public services it performs through its employees." *Pickering v. Board of Education* (1968), 391 U.S. 563, 568, 20 L. Ed. 2d 811, 817, 88 S. Ct. 1731.

The state may prohibit even the after-hours partisan political participation of its employees in the interests of governmental efficiency and impartiality and public confidence, given the historical corruption and devitalization formerly caused by the spoils system, *Broadrick v. Oklahoma* (1973), — U.S. —, 41 LW 5111, *U.S. Civil Service Comm. v. Letter Carriers* (1973), —U.S. —, 41 LW 5122, *United Public Workers v. Mitchell* (1947), 330 U.S. 75, 91 L. Ed. 754, 67 S. Ct. 556, despite strong First Amendment protection of freedom of association, a fundamental right.

On the other hand, the state may not inquire into its employees wholly private associations which are unrelated to their employment. There must be a substantial relation between the information sought and the compelling state interest. *Shelton v. Tucker* (1960), 364 U.S. 479, 5 L. Ed. 231, 81 S. Ct. 247, and see *NAACP v. Alabama* (1958), 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163.

Whereas public employee rights were formerly decided on the basis that public employment is a privilege that may be conditioned on the forfeiture of constitutional rights, courts now recognize that the absence of a constitutional right to public employment does not mean that public employees have no constitutional rights while in such employment. The more substantial the interest at

stake, the greater the burden of the state in justifying its infringement. In some cases, such as search and seizure, public servants have been found to have the same rights as ordinary citizens.

On the other hand, public employees may be dismissed "if they fail to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights/against self-incrimination/." Questions must be restricted to those "specifically, directly, and narrowly relating to the performance of [their] official duties." *Uniformed Sanitationmen Ass'n v. Commissioner of Sanitation* (1968), 392 U.S. 280, 284, 20 L.Ed. 1089, 1093, 88 S.Ct. 1917.

Another aspect of the question of the privacy of public employees is evident in the limitation on personal privacy allowed in tort law as to the publication of information "of public interest." The standard set for recovery by public officials in defamation cases in *New York Times v. Sullivan* (1964), 376 U.S. 254, 11 L.Ed. 2d 686, 84 S.Ct. 686, and *Rosenblat v. Baer* (1966), 383 U.S. 75, 15 L.Ed. 2d 597, 86 S.Ct. 669, which required public servants to prove "actual malice" was extended to private invasions of privacy, not only as to public officials but as to individuals "of public interest" as well. *Time v. Hill* (1969), 386 U.S. 374, 17 L.Ed. 2d 456. These cases apply to what known information may be published as absent reckless disregard for truth or falsity, not to what private information the state may compel to be published under threat of discipline or discharge. They make apparent, however, the fact that the right to privacy may be limited by the public's right to know what it has an interest in, especially as to public officials in their official capacity.

Justice Brennan points out in *New York Times v. Sullivan*, that: "[j] As factual error affords no warrant for repressing speech that would otherwise be free, the same is true of injury to official reputation." 376 U.S. at 273.

As noted, in the balancing of the individual employee's fundamental right to privacy and the state's compelling need for efficient, ethical government, the state's interest predominates. To promote its interest, the state is requiring complete financial disclosure. Such a means is substantially related to the end and is not overbroad. While full financial disclosure is burdensome, anything less would be ineffective in accomplishing the goal. The disclosure of only the sources of significant business interests and substantial amounts of income, as under the Ethics Act, is useful as far as it goes, but the information exempted is such that much corruption may go undetected. It is misleading, and ultimately undermining of public confidence, to institute a disclosure program having exemptions as broad as the coverage. The inclusion of dollar amounts is justified because it allows for detection of many more types of unethical conduct.

While detailed financial data may be required, the information on associational ties, as required in Question 49 of the Financial Disclosure Statement prepared by the Board of Ethics is an overbroad intrusion into the plaintiffs' rights to privacy and to freedom of association. Question 49 reads as follows:

> "List each partnership, trust, political organization, local governmental unit, professional service corporation, or other (including non-profit) association of which you personally have been an officer, employee, director, trustee or partner since April 1, 1972."

As phrased, this query goes beyond economic associations.

In striking down an Arkansas statute requiring teachers to list all the organizations to which they belonged, the U.S. Supreme Court found that: "The statutes comprehensive interference with associational freedom goes far beyond what might be justified in the exercise of the state's legitimate inquiry into the fitness and competency of its teachers." *Shelton v. Tucker,* 364 U.S. 490. Likewise, Question 49, because it is not explicitly linked to substantial economic associations, may not stand.

Furthermore, the requirement that complete federal and state income tax returns be filed for confidential use is similarly subject to attack for overbreadth. A number of individuals itemize deductions, listing such items as medical expenses and charitable contributions. Compelling employees to provide such information for purposes of ethical enforcement cannot be justified by state need. It is a clear invasion of privacy. Such information may not be required to be disclosed in this context.

There remains the question of the extent of the dissemination of the financial data provided on the Statement of Economic Interests. A fair and interpretative reading of the Executive Order indicates that it requires two levels of disclosure — first to the Board of Ethics, and next, on "reasonable" terms, to the public. Since the sweeping information sought is substantially related to a compelling state need, it may be provided to the state (Board of Ethics), as employer, without constituting an overbroad invasion of privacy. At this level the information may be useful to various authorized government agencies legitimately interested in corruption.

It is at the level of disclosure to the public at large that the right to privacy is most deeply involved and the actual usefulness of such disclosure must be most carefully scru-

tinized. Rules regulating what is reasonable disclosure at the public level have not yet been adopted. Therefore, this court cannot determine whether the plaintiffs' privacy will be invaded through unwarranted or unnecessary public exposure until such rules have been promulgated. No public disclosure may be made until rules are issued and such prohibition should and will be enforced by this court. The primary threats to privacy from inadequately restricted public disclosure would come from at least two sources: first, from permitting exposure of the Statements to persons interested in them for their own private purposes or out of idle curiosity, rather than in the public interest, unless the private purpose relates to dealing with the employee or his agency on public business; and second, from the retention in any form of such records when they no longer serve the public need, particularly after an individual has left the employment of the state.

Although this court cannot draft, nor anticipatorily decide the constitutionality of a rule of the Board of Ethics defining what constitutes reasonable public disclosure, it should be stressed that the right of privacy is a basic and important fundamental constitutional right which must be protected insofar as it possibly can be consistent with the public interest which is served by the disclosure requirement. In a word, the thrust here is that the right of a public employee to privacy must give way to disclosure in the public interest, but only to the extent necessary to accomplish that end.

II.

The second major issue raised by plaintiffs is whether the Governor has the power to lay down disclosure requirements for employees under his jurisdiction by executive order, for the purpose of enforcing ethical standards. This

question has two facets; one relates to disclosure by state personnel of their own personal finances, and the other concerns disclosure by spouses and family members living in the home.

The principal power of the Governor derives from section 8 of Article V of the 1970 Illinois Constitution, which grants him the "supreme executive power" and the responsibility for the "faithful execution of the laws." Clearly, the latter duty entails insuring that state employees under his direction and control are properly performing the duties assigned to them.

More specific authority, granted to all executive officers, is pointed to in section 2 of Article XIII:

> "All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch."

Thus in this section the Constitution both endorses the disclosure of economic interests and impliedly encourages those in positions of responsibility in the executive branch to act in the field of ethics. (The judicial branch is covered in Article VI, section 13(a).) The Record of Proceedings of the Sixth Constitutional convention supports this view:

> "Mr. Canfield: . . . I think we have to depend on the Governor to set up his own methods of control on his directors, who are under his immediate supervision. The elected officers . . . are only under the supervision of the people. The Governor can't enforce a standard with them. In his own director departments, he's got the responsibility and duty of doing it. . . ." (P. 1753)

Executive Order 4 (1973) is clearly an effort to "enforce ethical standards" within that segment of the executive branch under the Governor's control.

Until 1972, with the passage of amendments to the Governmental Ethics Act, the Governor had specific statutory authority to issue a code of ethics, including financial disclosure. Ill. Rev. Stat. 1971, ch. 127, pars. 605-101, 605-103. These sections were repealed by the Ethics Act. The court assumes, absent evidence to the contrary, that statutory authority was deemed to be unnecessary in light of the constitutional power evidenced in section 2, Article XIII.

Furthermore, the fact that the legislature has required state employees earning $20,000 per year or more from the state to file statements of economic interest does not foreclose the Governor from acting further so as to fulfill his important duty to maintain high ethical standards for the executive branch.

Consequently the Governor possesses adequate executive authority to require full financial disclosure from employees under his jurisdiction in an effort to enforce ethical standards.

The broad requirement that the spouse and immediate family members living with the employee must file disclosure statements presents a problem of different complexion. Disclosure may be required in cases where the economic interest is constructively controlled by the state

employee, *Stein v. Howlett*, supra, or is in fact the economic interest of the employee. But there is nothing in the constitution or statute which authorizes the government to unreasonably invade the privacy of private citizens. Although the provision as literally written is unconstitutional, this court will place upon it a construction which squares with the constitution. This is based on the rule that if reasonably possible, a construction will be adopted which renders the enactment constitutional rather than invalidate it *(Klein v. Dept. of Registration and Education* (1952), 105 N.E. 2d 758, 412 Ill. 75). The provision as so construed then means interests of spouse and immediate family members living with the employee which are constructively controlled by the employee. This is, of course, a question of fact which can be decided by the Board of Ethics as the situation arises.

III.

It is further contended that the Order contravenes the State Police Act, which empowers the Superintendent of State Police to prescribe rules of conduct for state policemen. Ill. Rev. Stat. 1971, ch. 121, par. 307.2. This statute is not a restriction on the power of the Governor, however. The Governor is not without authority over the departments of government. An affirmative grant of authority to a subordinance does not limit the general authority of the chief executive, particularly where uniformity is desirable.

IV.

Plaintiffs also allege that the requirement that persons required to file Statements also submit their state income tax returns is a violation of section 9-917 of the Income Tax Act, Ill. Rev. Stat. 1971, ch. 120, par. 9-917, which requires that Illinois tax returns be held in confidence and not disclosed to the public.

The Income Tax Act simply precludes the Department of Revenue from disclosing any information it may obtain. The requirement is imposed solely on the Department of Revenue and in no way limits the ability of other persons to obtain the same information from its original source, namely, the person filing it.

V.

It is charged that the Order is in violation of Article V, section 11 of the Illinois Constitution, which authorizes the Governor to reassign functions among the executive agencies which are responsible to him, subject to the limitation that where such reassignment contravenes a statute, it must first be submitted to the General Assembly.

Plaintiffs complain that the Executive Order, in effectively reassigning responsibility for the function of ethics enforcement from the Department of Personnel, where it had been lodged pursuant to Executive Order 4 (1970) issued by Governor Richard B. Ogilvie, to a new Board of Ethics, contravened one or more statutes. No statute specifies any executive agency responsible to the Governor which shall perform the functions now assigned to the Board of Ethics.

Furthermore, the statute, repealed in 1972, which directed the Governor to promulgate a code of ethics, did not specify any department to be responsible for this function. Consequently, the reassignment of the functions contravenes no statute.

VI.

It is further claimed by plaintiffs that the classification "persons whose position is subject to undue influence" is void for vagueness, falling within the rule that a law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess as to its

meaning and differ as to its application. *Connally v. General Construction Co.* (1925), 269 U.S. 385, 70 L.Ed. 322, 46 S.Ct. 126. *Cramp v. Board of Public Instruction* (1961), 368 U.S. 278, 287, 7 L.Ed. 2d 285, 82 S.Ct. 275.

If employees were required to decide for themselves whether they fall into this category, they might have to guess at its meaning. However, the more precise delineation of the generic term has been properly delegated to the Board of Ethics. Administrative determination is proper in view of the myriad of departments and positions required to be considered in the construction of the standards for inclusion as "positions subject to undue influence." The employee need not guess as to what conduct is required of him; he is informed if he is required to file, and he may challenge his classification. Consequently, the term is not too vague when standards are established by the Board.

Further, the plaintiff who was required to file as "a person whose position is subject to undue influence" asserts that he is denied due process of law by the arbitrary and capricious manner in which persons who fall into that category were selected. Although the Order specifies that this determination shall be made from time to time by rule of the Board, no guidelines or definitions were adopted. Instead, the determination was left to department heads, with the Executive Director of the Board of Ethics overseeing the lists to prevent gross disparities between departments.

The Board is required to make regulations that are "sufficiently explicit, against the background of custom, to be adequate for proper administration and for judicial review if there should be an occasion for it." *Fahey v. Mallonee* (1947), 332 U.S. 245, 253, 91 L.Ed. 2030, 2039, 67 S.Ct. 1552.

Although the term "persons whose position is subject

to undue influence" is not unconstitutionally vague as to the Board, a single decision-making body, it lacks sufficient precision to be applied uniformly by numerous department heads, each with his own conception of the definition of the term. There is need for uniformity and the reduction of the possibility of arbitrary imposition of the onerous filing requirement. Due process and equal protection require the issuance of uniform, reasonable guidelines, as the Executive Order directs the Board to issue, for the guidance of agency heads as well as for the purposes of review of individual challenges by the Board. The delegation of rule-making powers is permissible in some instances, but where, as here, the job of rule making by the Board is defeated by the effective delegation of the entire power to scores of agency heads, the very persons who need the benefit of a more precise definition, it becomes sub-delegation "run-riot." This does not preclude the Board from using the assistance of department heads to recommend criteria for rule making, provided the Board ultimately establishes uniform guidelines, nor does it preclude agency heads from determining in the first instance which of the employees fall within the definition outlined in rules of the Board.

The Executive Director is obviously applying implicit standards in overseeing these lists. These standards should be made explicit.

There is a clear question whether, for instance, the inclusion of employees whose exercise of discretion in regard to policy, purchasing, contracting, or expenditure is minimal would not be a violation of such individual's privacy on the ground that the state's compelling interest is not being served sufficiently to outweigh the right to privacy.

For these reasons, it is ordered that no employees in the category of "persons whose positions are subject to undue

influence" may be required to file until more explicit guiding rules have been adopted by the Board of Ethics and all lists of such employees have been reviewed by agencies and the Board to determine compliance with such guidelines.

VII.

Plaintiffs' final contention is that the requirement that disclosure be made by persons in agencies "whose vouchers are subject to approval of the Department of Finance" constitutes an unreasonable classification under the equal protection clauses of Article I, section 2 of the Illinois Constitution and the Fourteenth Amendment of the United States Constitution.

The agencies whose vouchers are subject to approval of the Department of Finance are defined as departments under the Civil Administrative Code and "all other officers, boards, commissions and agencies of the State government." Ill. Rev. Stat. 1971, ch. 127, par. 146. Exceptions are provided. They are: elected state officers in the executive department, including the Governor; the various courts; the two legislative bodies; the various universities and state colleges (except for two Boards of Higher Education that are within the Order); the Illinois State Toll Highway Authority, agencies whose boards are appointed by the Governor having public corporate status, such as the St. Louis Metropolitan Airport Authority.

The classification was made with the intention of bringing within the ambit of the Order the agencies and departments over which the Governor exercises the most control. The exceptions are his own office, which he had independently ordered to file, offices under the control of other elected officers, or quasi-independent bodies that have historically been considered less directly subject to the direction and control of the Governor.

The use of a category of "agency whose vouchers are subject to the Department of Finance" exempts some employees who perform functions similar to those performed by persons filing. However, the equal protection clause does not require absolute equality. ["The Fourteenth Amendment permits a wide scope of discretion in enacting laws which treat some groups of citizens differently from others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the state's objective . . . a statutory discrimination will not be set aside if any state of facts may be conceived to justify it."] *McGowan v. State of Maryland* (1961), 366 U.S. 420, 425-426, 6 L.Ed. 2d 393, 399, 81 S.Ct. 1101.

"Rough accommodations made by government do not violate the equal protection clause of the Fourteenth Amendment unless the lines drawn are 'hostile or invidious'." *Norvell v. Illinois* (1963), 373 U.S. 420, 424, 10 L.Ed. 456, 459, 83 S.Ct. 1366. Equal protection is designed to prevent any person or class from being "singled out as a special subject of hostile or discriminating legislation." *Pembina Consol. Silver Min. & Mill Co. v. Pennsylvania* (1887), 125 U.S. 181, 188, 31 L.Ed. 650, 653, 8 S.Ct. 737.

A second contention on equal protection grounds is that the fact that the statements of persons "appointed from the public to serve on a Board or Commission" are excused from public disclosure is unreasonable discrimination. Discrimination, particularly in light of the fact that such persons include members of the Illinois Racing Board, a repeated subject of criticism in the conflict of interest area, as well as members of such less conspicuous bodies as the Capital Development Board. However, imposing a public disclosure requirement on these voluntary, unsalaried public servants is likely to impose an extreme chilling effect

on recruitment to these positions which outweighs the need for public exposure. Therefore, the differentiation serves a proper public purpose related to the legitimate and compelling matters of the state and constitutes no violation of equal protection.

SUMMARY

I find that Governor Walker's Ethics Order is constitutional and its issuance within the power of the chief executive. (See I and II of opinion.) I further find that it is not subject to attack on other constitutional or legal grounds urged, except as hereinafter noted. The Order is therefore affirmed with the following exceptions:

(1) No information disclosed may be divulged or made public until the Board of Ethics has, by rule, defined the term "open to reasonable public inspection" and then only upon a finding that such public inspection is in the public interest. The Board of Ethics is hereby required to make such rule to provide the greatest amount of protection possible for the individual privacy of those affected by the Order consistent with the object of the Order requiring full financial disclosure in the public interest. This court cannot anticipate, and therefore does not rule on, the legality or validity of such a rule to be issued by the Board of Ethics in the future. (See II of opinion.)

(2) The requirement that the spouse and members of the family of the employee living with him must file is construed to mean those financial interests constructively owned by the employee or property, the title to which is held for the employee. To construe this requirement otherwise would mandate its invalidation. Whether the employee's spouse or member of his family living with him should be excused from filing by reason hereof can, of course, be decided on application by the Board of Ethics as a question of fact. (See II of opinion.)

(3) The state may not require the filing of that part of the tax return which shows itemized deductions, for the state may not inquire into its employees wholly private associations which are wholly unrelated to their employment. (See I of opinion.)

(4) The Order requires those to file whose position is subject to undue influence. This classification has been attacked as being void for vagueness; however, I uphold it inasmuch as the more precise delineation of the generic term has been properly delegated to the Board of Ethics. The classification "position subject to undue influence" has likewise been attacked as a denial of due process of law by the arbitrary and capricious manner in which persons who fall into that category were selected. I am of the opinion that the manner in which the persons were chosen by the Board, i.e., asking each department head to send in the names of the persons to whom it applies, is unconstitutional. The Board must issue regulations that are sufficiently explicit to be adequate for proper administration and for judicial review if there should be an occasion for it. Due process and equal protection require the issuance of uniform, reasonable guidelines, as the Ethics Order itself directs the Board to issue for the guidance of agency heads, as well as for the purposes of review of individual challenges by the Board. The list previously approved by the Board cannot stand because there were no reasonable guidelines or standards set by the Board predating the listing of those falling within the category. Upon adoption of sufficient rules in this area, the constitutionality of requiring those "in positions subject to undue influence" to make financial disclosure is upheld, and a list based on those rules would be proper. (See Point VI of opinion.)

Finally, I have upheld the distinction in the Ethics Order that the financial disclosure statement of persons "appointed from the public to serve on a Board or Commission"

are not to be made public, whereas reasonable public disclosure is required for all others required to file. The basis of holding this distinction proper is that imposing a public disclosure requirement on these voluntary, unsalaried public servants is likely to impose an extreme chilling effect on recruitment to these positions which outweighs the need for public exposure. (See V of opinion.)

Counsel for defendants are directed to prepare an order in accordance with this opinion. The effective date of the Order is to be 30 days after this Order becomes effective or such further time as fixed by the Board of Ethics.

Very truly yours,

J. WALDO ACKERMAN
Circuit Judge

JWA:jah

APPENDIX C

EXECUTIVE ORDER

No. 4 — (1973)

Ethics Disclosure

The people of the state are entitled to a high standard of candor from their public servants. The public's right to know must take precedence over the citizen's right of privacy for purely personal affairs when the citizen becomes a public official. Accordingly, I hereby order:

1. There is created a Board of Ethics consisting of three members appointed by the governor to serve at his pleasure. The governor shall, from time to time, designate one member as chairman. The members of the board shall receive no compensation for their services.

2. The board shall have jurisdiction over each agency whose vouchers are subject to approval of the Department of Finance.

3. At the commencement of state service and thereafter between April 15 and April 30 of each succeeding year, each of the following persons in each agency subject to the jurisdiction of the board shall file with the board a sworn Statement of Economic Interest and a copy of his most recent federal and state income tax returns:

a. Each person appointed by the governor;

b. Each person who receives $20,000 or more per year from the state; and,

c. Each other person whose position is subject to undue influence (as determined from time to time by rule of the board).

4. The Statement of Economic Interest shall contain:

a. A current net worth statement, disclosing all assets and liabilities of the person;

b. A statement of income (including capital gains) received by the person during the preceding calendar year, disclosing

1. each source of income,

2. the total amount received from the source, and

3. the nature of the income transactions involving the source.

To provide this information, pertinent portions of federal or state income tax returns shall be made part of the Statement of Economic Interest;

c. A statement of gifts received by the person during the preceding calendar year, disclosing all gifts from any source having business with or regulated by the agency of the person and all gifts of a value of $50 or more from sources other than members of the person's family;

d. A statement of close economic associations, indicating the person's position with each business or professional entity with which the person is associated as an officer, employee, director or partner or in which he has a substantial interest and identifying those entities which derive substantial income from the state or from professional engagements concerning the state.

5. The Statement of Economic Interest of each person other than one appointed from the public to serve on a board or commission shall be open to reasonable public inspection. The board shall provide by rule for the time, place and manner of inspection.

6. Subject to rule of the board, the Statement of Economic Interest shall disclose interests of the spouse and

immediate family living with the person making the statement.

7. The failure to make timely filing of a required document, the making of a false or misleading statement or an omission in a document, and the failure to cooperate with the board shall be grounds for disciplinary action, including discharge.

8. The board shall review the documents filed with it, and receive information from the public. The board shall make investigations and report to the governor upon finding an apparent conflict of interest or other impropriety, and may recommend remedial action against the person involved.

9. The board shall make rules to carry out and enforce this order. The board shall prepare readily understandable instructions and offer reasonable assistance to persons subject to this order. The board shall cooperate with the secretary of state to reduce duplication of effort by persons who are required to make disclosure under both this order and the Governmental Ethics Act.

10. This order is effective upon filing with the secretary of state and shall remain in full force and effect unless amended or revoked by executive action. For 1973, the filings required under paragraph 3 shall be made by May 30, 1973, or earlier if so provided by rule of the board. Paragraph 13 of Executive Order No. 2, 1971, pertaining to disclosure, and the rules and regulations of the Department of Personnel implementing that paragraph, are superseded.

February 26, 1973
Springfield, Illinois

Daniel Walker
Governor

APPENDIX "D" S:73

Agency ..... Division .....

Name ..... Soc Sec. No. .....
(Last) (First)

Position Title .....

Work County .....

Annual Salary .....

Summary Page
Financial Disclosure Statement
1973

Fill out Schedules A, B, C, and D. Then come back to this page. Round all amounts to the nearest dollar.

Copy from the schedules the following information:

1. Total Personal Assets (Question 22) .....
2. Total Assets (Question 23) .....
3. Total Liabilities (Question 29) .....
4. Total Income (Question 32) .....
5. Total Income of Other Family Members (Question 40) .....
6. Total Gifts (Question 47) .....

Copy "yes" and "no" answers from the following questions:

	Yes	No
7. Question 24	.....	.....
8. Question 31	.....	.....
9. Question 39	.....	.....
10. Question 46	.....	.....
11. Question 48	.....	.....

12. Question 50 ....

13. Question 51 ....

14. I have examined this statement and the attached schedules and they are, to the best of my knowledge, correct, completed, and true.

....
(Signature) (Date)

A-1:73

Agency ..... Division .....

Name ..... Soc. Sec. No. .....
(Last) (First)

Schedule A—Part I

Assets as of May 1, 1973 .....
(check one) Dec. 31, 1972 .....

Include all assets of your spouse.
Round all amounts to the nearest dollar.

15. List the total present market value of all securities which you own. .....
(Total)

Itemize all securities of a firm in which holdings controlled by you either (a) exceed $2,500 or (b) are 5% or more of the total equity of the firm or (c) in which you are an employee, officer or director.

Type of Security	Firm Issuing Security	No. of Units	Market Value
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Is there a continuation sheet? YES..... NO.....

16. List the total fair market value of all real estate (except your home and the accompanying residential land) in which you have an interest. .....
(Total)

Itemize all holdings either (a) valued at over $2,500 or (b) involved with any government agency.

County	Address	Involved with Gov't Agency?	Fair Market Value
.....	.....	YES.... NO....	.....
.....	.....	YES.... NO....	.....
.....	.....	YES.... NO....	.....

Is there a continuation sheet? YES..... NO.....

17. List the total value of your share in partnerships, joint ventures or other unincorporated businesses. ..... (Total)

Itemize all.

Firm	Value
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

18. List the total value of all assets in blind trusts of which you are a beneficiary. ..... (Total)

Itemize each.

Trustee	Address	Value of Trust
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

I hereby authorize and direct the above named trustees to disclose to the Board of Ethics all holdings in the "blind trusts" for which I am a beneficiary.

.....
(Signature)

19. List the total value of all personal loans re-

ceivable. These are loans which you have made to others.

.....
(Total)

Itemize each that has an outstanding balance of over $500.

Loaned To	Balance
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

20. List the total value of all other investment assets which you own. Itemize any with a market value over $2,500.

.....
(Total)

Asset	Market Value
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

21. List the total value of all checking accounts, savings accounts, etc. which you have with financial institutions.

.....
(Total)

Itemize each containing over $500.

Institution	Account No.	Amount
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

List the total amount of cash you have not listed in the above accounts.

.....
(Total)

22. List the total market value of all other personal assets. Include your home(s) and accompanying lots, paid up life insurance, consumer durables, art work, automobiles, etc.

.....
(Total)

23. Total Assets. (The sum of 15 through 22) .....
(Total)

24. Are any of the firms or holdings listed in questions 15 through 20 involved in any way with your agency or subordinate agencies? If "YES" explain on a separate sheet of paper. (See instructions)
YES..... NO.....

A-2:73

Agency ..... Division .....

Name .... Soc. Sec. No. .....
(Last) (First)

Schedule A—Part 2

Liabilities as of May 1, 1973 .....
(check one) Dec. 31, 1972 .....

Round to the nearest dollar.
Be sure to include the liabilities of your spouse.

25. List the total value of all mortgages presently outstanding on your home(s).
.....
(Total)

Itemize each mortgage:

Institution Holding Mortgage	Balance Owed
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

26. List the total amount of all notes and accounts on which you presently owe.

Itemize each note or account on which you owe over $500.
.....
(Total)

Owed to	Balance Owed
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

27. List the total amount of all contingent liabilities.

Itemize each which has an amount of over $500. .....
(Total)

Nature of Liability	Amount
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

28. List the total amount of any other liabilities that you have. .....
(Total)

Itemize each which has an amount of over $500.

Owed to	Nature	Amount
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

29. List your total liabilities (the sum of 25, 26 and 28). .....
(Total)

30. List your total net worth (subtract 29 from 23). .....
(Total)

31. Are any of the creditors listed in questions 25 through 28 involved in any way with your agency?
Yes..... No.....

If "yes" explain on a separate sheet of paper (see the instructions).

B-1:73

Agency ..... Division .....

Name ..... Soc. Sec. No. .....
(Last) (First)

Schedule B—Part 1
Income for 1972

Attach copies of your U.S. and Ill. Income Tax Returns. Round all amounts to nearest dollar.

32. Your total gross adjusted income for 1972 per your U.S. Form 1040. .....
Indicate if this was a joint return with your spouse. Yes..... No.....

33. The total wages, salary, etc. from the State of Illinois of the person filing. .....
(Total)

Total income, if any, of your spouse from the State of Illinois. .....
(Total)

34. The total of all other income for services rendered. Include income of spouse if you checked "yes" to question 32. .....
(Total)

Itemize completely

Source	Spouse's Income	Amount You Were Paid
.....	Yes..... No.....	.....
.....	Yes..... No.....	.....
.....	Yes..... No.....	.....

Is there a continuation sheet? YES..... NO.....

35. The total amount of dividend, interest, partnership share, and rental income received by you (or by your spouse if you checked "yes" to question 32). .....
(Total)

Itemize income from any source listed on schedule A or from which you received over $1,000.

Source	Nature of Income	Amount You Were Paid
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

36. Total value of gifts received by you and reported as income on your U.S. Income Tax Return. Include gifts to your spouse if you checked "yes" to question 32. .....
(Total)

37. Total amount of realized capital gains or losses. Include those of your spouse if you checked "yes" to question 32. .....

Itemize all capital gains. (Total)

Asset (Source)	Purchase Price	Sale Price	Gain or (Loss)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Is there a continuation sheet? YES..... NO.....

38. The total amount of all other income that you received last year. Include income of spouse if you check "yes" to question 32. .....

Itemize for each source (Total)

Source	Nature of Transaction	Amount Received
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

39. Are any of the sources listed in questions 32 through 38 involved in any way with your agency?

Yes..... No.....

If "yes" explain on reverse side of this sheet (see instructions).

B-2:73

Agency ..... Division .....

Name ..... Soc. Sec. No. .....

(Last) (First)

Schedule B—Part 2

Income for 1972

Attach copies of your U.S. and .ll. Income Tax Returns. Round all amounts to nearest dollar.

40. List all other members of your immediate family living in your household who received over $2000 in income last year. If you checked "yes" to question 32, do not include your spouse.

Itemize

Name	Relationship to you	Total Income on U.S. 1040	
.....	.....	.....	
.....	.....	.....	
.....	.....	.....	.....
			.....
			(Total)

41. The total of all income for services rendered of those named in question 40. .....

(Total)

Itemize completely

Source	Name of Recipient	Amount They Were Paid
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

42. The total amount of dividend, interest, partnership share, and rental income received by those named in question 40. .....
(Total)

Itemize income from any source listed on schedule A or from which they received over $1,000.

Source	Nature of Income	Amount They Were Paid
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

43. Total value of gifts received by them and reported as income on their U.S. Income Tax Returns. .....
(Total)

44. Total amount of realized capital gains or losses of those listed in question 40. .....
Itemize all capital gains. (Total)

Asset (Source)	Purchase Sale	Sale Price	Gain or (Loss)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Is there a continuation sheet? YES..... NO.....

45. The total amount of all other income received last year by those listed in question 40. .....
Itemize for each source. (Total)

Source	Nature of Transaction	Amount Received
.....	.....	.....
.....	.....	.....
.....	.....	.....

Is there a continuation sheet? YES..... NO.....

43. Are any of the sources listed in questions 40 through 45 involved in any way with your agency? Yes..... No.....

If "yes", explain on separate sheet of paper (see instructions).

C:73

Agency ..... Division .....

Name ..... Soc. Sec. No. .....
(Last) (First)

Schedule C

Gifts Received Since Jan. 1, 1972

Round all amounts to the nearest dollar.

47. List the total value of all gifts you, your spouse, or any member of your immediate family living in your household have received since Jan. 1, 1972. .....
(Total)

Include all honoraria.

Do not include gifts between members of the household.

Itemize for each donor from whom you have received gifts for which the **total** value amounted to $50.00 or more, or who has business with or is regulated by your agency: (a) the name of the donor and (b) the value of the gift(s).

Donor	Value
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

48. Are any of the donors listed in question 47 involved in any way with your agency? YES ..... NO .....

If "yes", explain on a separate sheet of paper (see instructions).

D:73

Agency ..... Division .....

Name ..... Soc. Sec. No. ..... - .....
(Last) (First)

Schedule D

Economic Associations Since April 1, 1972

Round all amounts to the nearest dollar.

49. List each partnership, trust, political organization, local governmental unit, professional service corporation, or other (including non-profit) association of which you personally have been an officer, employee, director, trustee or partner since April 1, 1972.

Association	Your Position	Your Payment	Approximate income Association Receives from State
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Is there a continuation sheet? YES..... NO.....

50. Have you or any association listed in 49 above represented anyone before State agencies since April 1, 1972? Yes..... No.....

If "yes" list each agency and the type of matter involved. Itemize:

Agency	Type of matter
.....	.....
.....	.....
.....	.....
.....	.....

Is there a continuation sheet? YES..... NO.....

51. If any person or entity in question 49 receives over $500 from the State, check "yes" and explain on a separate sheet of paper for each person or entity (a) the nature of the income transaction (e.g. "sale of concrete to the State"), and (b) the relationship, if any, of your agency to this transaction. YES..... NO.....

APPENDIX "E"

INSTRUCTIONS FOR FILING GOVERNOR'S FINANCIAL DISCLOSURE STATEMENT 1973

Governor Walker said in his Executive Order No. 4, "The people of the State are entitled to a high standard of candor from their public servants." Under the terms of this Executive Order, each person appointed by the Governor, each State employee who receives $20,000 or more in earnings from the State, and each person whose position is subject to undue influence must file with the Board of Ethics a financial disclosure statement. This statement is not the same as the Statement of Economic Interest required, by law, to be filed with the Secretary of State. This year some individuals will be required to file both forms.

STATEMENT

Along with these instructions, you have received a separate booklet containing the Financial Disclosure Statement. The Statement is made up of four schedules and a summary page. Schedule A is a statement of net worth. Schedule B is a statement of income. Schedule C is a statement of gifts received. Schedule D is a statement of economic associations. You are required to complete all sections of these schedules. You are also required to file with this Statement a copy of your most recent Federal Income Tax Return (U.S. 1040) and State Income Tax Return (Ill. 1040).

The Financial Disclosure Statement of all persons *except* those persons appointed from the public to serve on a Board of Commission will be open to reasonable public

inspection. However, the Income Tax Returns will, in all cases, remain confidential and will be released to no one.

CONTINUATION SHEETS

If, for any part of this Statement, there is not enough space on the form, you should make a continuation sheet to complete the question. Please number on the continuation sheet the question you are answering. In addition, place in the upper right hand corner of all continuation sheets your name, your agency, and your social security number.

DEADLINE FOR FILING — PENALTIES

The deadline for filing this Statement with the Board of Ethics is May 30, 1973. "The failure to make timely filing of a required document, the making of a false or misleading statement or an omission in a document and the failure to cooperate with the Board [of Ethics] shall be grounds for disciplinary action, including discharge." (Section 7, Executive Order 4)

Please return your completed forms to:

Illinois Board of Ethics
State of Illinois Building
160 N. La Salle Street — Rm. 2010
Chicago, Illinois 60601

First read the question you are about to answer. Then read carefully the individual instruction for that question. If you have any questions, we will be glad to answer them. Call the Board of Ethics, telephone 312/793-3230.

SCHEDULE A — INSTRUCTIONS

Be sure to fill in your agency, division, name, and social security number at the top of each part of this schedule.

On this schedule you are to list all your assets (everything that you owned or was owed to you) and liabilities (everything which you owed to others) as of May 1, 1973, or December 31, 1972, whichever is more convenient for you.

Include on this schedule all assets and liabilities of your spouse, as well as of yourself. Include all assets in trusts of which you or your spouse are a beneficiary. Round all amounts to the nearest dollar.

PART 1 — ASSETS

15. Include stocks, bonds, commercial paper, bank holding paper, government bonds, etc. Indicate the type of security (stock, bond, etc.), the name of the organization issuing the security, the number of shares or bonds, etc. that you own, and the market value of your holding.

16. Include mortgaged property at total fair market value. Indicate that a holding is involved with a government agency if it is now or may in the foreseeable future be involved in an action regarding zoning, tax foreclosure, assessment appeal, violation of ordinances, condemnation, sale to a government body, etc. List all interests in real estate including beneficial interests in land trusts, joint ventures, etc.

17. The value of your share in a partnership is the market value, if salable, or the capital account if not salable.

18. Include the total market value of all assets held for you in a "blind trust". Sign the release directing the trustee(s) to make known the contents of the trust to the Board of Ethics.

19. For each loan which you made to any person or entity with an outstanding balance of over $500, list the

person to whom the loan was made and the outstanding balance owed to you on the loan.

20. Self explanatory.

21. Itemize the name and city of the financial institution, the account number, and the balance in the account if over $500.

22. Do not include land accompanying your home(s) if it is used for non-residential purposes, such as agriculture. Do not include the value of any asset listed in Sections 15 through 21 inclusive.

23. Self explanatory.

24. If any firm or holding listed on this schedule, to the best of your knowledge, does over $500 worth of business with or is in any way licensed, inspected, or regulated by your agency, check 'yes', and on a separate sheet explain in full for each firm or holding, (a) exact nature of contact between agency and firm or holding, (b) how your function in the agency relates to contact between firm or holding and agency. Indicate if your position gives you any discretion over contact.

PART 2 — LIABILITIES

25. Self explanatory.

26. Indicate to whom the account or note is owed.

27. Include lawsuits presently pending against you and notes which you have co-signed.

28. Include short positions on the stock market and debit balances in margin accounts.

29. Do not include the contingent liabilities listed in question 27.

30. Self explanatory.

31. If any creditor listed on this schedule, to the best of your knowledge, is in any way licensed, inspected, or regulated by your agency, or the agency purchases from the creditor, check 'yes', and on a separate sheet explain in full for each creditor (a) the nature of the relationship which creditor has with agency, (b) how your function in the agency relates to any contact between creditor and agency. Indicate if your position gives you any discretion over this contact.

SCHEDULE B — INSTRUCTIONS

On this schedule you will itemize all income of yourself and those members of your immediate family living in your household. Part 1 is your income for last year (and your spouse's, if you filed a joint tax return). Part 2 is the income of all other family members (and your spouse's, if you *did not* file a joint tax return).

Be sure to fill in your agency, division, name, and social security number at the top of each part of this schedule.

32. Enter here the amount of total income from your tax return. If you filed a joint tax return, this will include your spouse's income. This is line 17 on the U.S. 1040 or line 14 on the U.S. 1040A.

33. Enter here the total amount that you personally were paid by the State of Illinois last year. Enter the amount, if any, that your spouse was paid by the State (refer to your W-2 forms).

34. Enter the total of all other wages, salaries, commissions or any other payment for services rendered which you (or your spouse if you filed a joint tax return) performed. Itemize all of this income. Check 'yes' if any

given item is *spouse's income*. Enter the name of the firm, organization, or person making the payment in the column marked source. Enter the *amount you were paid* by this source.

35. Include here all investment income other than capital gains. Indicate as the *source* of the income the asset, firm, etc. from which the income was derived (be specific). Specify the nature of the income (dividend, rent, etc.) and the amount you received last year.

36. Include here only gifts that you reported as income on your tax return last year. Report all gifts in Schedule C.

37. Enter the total amount of all realized capital gains or losses (put the losses in parentheses). Either itemize each gain or loss *or else* attach a copy of Schedule D of your U.S. Income Tax Return. If you itemize, specify the *asset* exactly.

38. Enter the total amount of any income you received that you have not reported on lines 32 through 37 inclusive. Indicate the *source* of the income (the firm, person, etc.), the *nature of the transaction* (alimony, inheritance, etc.), and the *amount you received* from each source.

39. If any source of income listed on this schedule, to the best of your knowledge, does over $500 worth of business with or is in any way licensed, inspected, or regulated by your agency, check 'yes', and on a separate sheet explain in full for each source of income, (a) the exact nature of the contact between the agency and the source, (b) how your function in the agency relates to the contact between the source and the agency. Indicate if your position gives you any discretion over this contact.

PART 2

40. If other members of your immediate family living in your household earned over $2,000 last year, enter their names and the amount of their gross adjusted income from their U.S. 1040. If your spouse filed a separate income tax return, include her (his) income here also.

41. Same as 34, except that you enter the name of each person earning the income.

42-46. Same as 35-39, except the income is that of the other family members listed in 40.

SCHEDULE C — INSTRUCTIONS

Be sure to fill in your agency, division, name and social security number at the top of this schedule.

47. If any donor of gifts or honoraria you have received since January 1, 1972 has business with or is regulated by your agency, itemize the donor even if the total value of the gifts is below $50. Itemize *any* donor other than a member of your immediate family who has given you gifts totaling over $50 in value.

48. If any donor listed on this schedule, to the best of your knowledge, does over $500 worth of business with or is in any way regulated, licensed, or inspected by your agency, check 'yes' and on a separate sheet explain in full for each such donor, (a) exact nature of contact between agency and donor, and (b) how your function in agency relates to this contact. Indicate whether your position in the agency gives you any discretion over the handling of this contact.

SCHEDULE D — INSTRUCTIONS

Be sure to fill in your agency, division, name, and social security number at the top of each part of this schedule.

49. Enter here the names of all organizations other than the State in which you have a substantial interest. Indicate *your position* in the organization and *your payment*, if any, from the organization. Indicate approximately the *amount of income*, if any, that the organization receives from the State.

50. Self explanatory.

51. Self explanatory.

SUMMARY PAGE — INSTRUCTIONS

Please fill in the information requested at the top of the page.

1-6. Copy from the schedules the numbers asked for in these questions. If any answer is zero, enter 0.

7-13. Check the appropriate line under 'yes' or 'no' depending upon how you answered these questions on the schedules. Answer every question.

14. Please read the statement and sign and date the form.

On behalf of the Governor and the people of the State of Illinois, "thank you."

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States

October Term, 1974

No. 74-[illegible]

FILED
OCT 29 1974
MICHAEL RODAK, JR., CLERK

TROOPERS LODGE No. 41, FRATERNAL ORDER OF POLICE, an Illinois not-for-profit corporation, as representative of its members employed by the State of Illinois; HENRY SZUDRSKI, Trooper of Cook County, Illinois; ROGER E. LOGUE, Trooper of Sangamon County, Illinois; LESTER L. CHINNING, Sergeant, Sangamon County, Illinois; JOHN OLDANI, Trooper, Madison County, Illinois; MIKE DONOVAN, Trooper, St. Clair County, Illinois; and PETE McALLISTER, Trooper, Peoria County, Illinois, and BILLIE JOE RIVERS, Trooper, Sangamon County, Illinois,

Petitioners,

vs.

DANIEL WALKER, as Governor of the State of Illinois; ABNER J. MIKVA, as Chairman of the Illinois Board of Ethics; GEORGE M. BURDETT, as member of the Illinois Board of Ethics; JOHN KINNEMAN, as member, as member of the Illinois Board of Ethics; WARD FOODY, as Executive Director of the Illinois Board of Ethics; and DWIGHT E. PITMAN, Superintendent, Illinois State Highway Police,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-350

TROOPERS LODGE No. 41, FRATERNAL ORDER OF POLICE, an Illinois not-for-profit corporation, as representative of its members employed by the State of Illinois; HENRY SIKORSKI, Trooper of Cook County, Illinois; ROGER BOONE, Trooper of Sangamon County, Illinois; LESLIE GUNNING, Sergeant, Sangamon County, Illinois; JOHN OLDANI, Trooper, Madison County, Illinois; MIKE DONOVAN, Trooper, St. Clair County, Illinois; and PETE McALLISTER, Trooper, Peoria County, Illinois, and BILLIE JOE BIVENS, Trooper, Sangamon County, Illinois,

Petitioners,

vs.

DANIEL WALKER, as Governor of the State of Illinois; ABNER J. MIKVA, as Chairman of the Illinois Board of Ethics; GEORGE M. BURDITT, as member of the Illinois Board of Ethics; JOHN KINNEMAN or his successor, as member of the Illinois Board of Ethics; WALT FOODY, as Executive Director of the Illinois Board of Ethics; and DWIGHT E. PITMAN, Superintendent, Illinois State Highway Police,

Respondents.

RESPONDENTS BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

QUESTIONS PRESENTED FOR REVIEW

(1) Have the petitioners raised a substantial federal question in their petition by alleging that Executive Order No. 4 (1973) and the financial disclosure statement promulgated pursuant thereto, constitute an invasion of privacy, denial of equal protection of the laws, due process of law or freedom of association?

(2) Should the petition be denied because the petitioners have failed to raise a substantial federal question?

(3) Should the petition be denied because the decision of the Supreme Court of Illinois is justified on independent and adequate state grounds?

(4) Should the petition be denied because the issues in this action have not reached the level of concreteness, adversity and ripeness appropriate for review?

STATEMENT OF CASE

On February 26, 1973, the Governor of the State of Illinois, DANIEL WALKER, issued Executive Order No. 4 (1973) entitled "Ethics Disclosure" (Pet. App. C) (hereinafter the "Executive Order") which established a policy of financial disclosures by certain state employees and appointed officers in the Executive Branch of government. The Executive Order created the Illinois Board of Ethics (hereinafter "the Board") and vested it with authority to promulgate certain rules and regulations and to supervise the administration of the Executive Order and the annual filing with the Board of a statement of economic interest from each employee. The Board was composed of three individuals appointed by the Governor.

The Board's initial task was to determine which persons within the Executive Branch would be required to file a statement of economic interest (hereinafter the "statement"). This involved a two-fold process: first, the Board determined which state agencies had vouchers subject to approval by the Department of Finance and were thus subject to the jurisdiction of the Board; and, second, the Board determined which officers and employees within those particular departments or agencies would be required to file.

The full extent of the Board's jurisdiction had not been resolved at the time of trial, and, because of the preliminary injunction issued by the trial court, has not as yet been finally determined. In addition to the agencies whose vouchers are subject to approval by the Department of Finance, various other agencies within the Executive Branch have been brought within the jurisdiction of the Board.[1]

The Executive Order specifies three categories of persons who are required to file statements:

(a) Each person appointed by the Governor;

(b) Each person who receives $20,000 or more per year from the State; and

(c) Each other person whose position is subject to undue influence (as determined from time to time by rule of the Board).

Persons who fall into the first two categories are readily ascertainable; however, because petitioners do

---

1. *E.g.*, employees within the Governor's office, the Bureau of the Budget, the Governor's office on Human Resources, and the Board of Ethics itself.

not fall within those two classes, questions pertinent thereto are not now in issue. In order to determine which positions in the Executive Branch should be considered subject to "undue influence," the Board requested, on March 26, 1973, that the various agency heads submit lists of job titles and job classifications which the agency heads considered to be subject to undue influence. The Board examined and, where appropriate, discussed, these lists with the various agency heads, suggesting that either additional positions be included or that some positions be excluded. On May 14, 1973, the Board formally adopted its selections. Subsequently, the Board received additional lists of job classifications which it has not considered, pending dissolution of the preliminary injunction entered by the trial court and the stay issued pending appeal.

The petitioners in the instant case are composed solely of state troopers, who are members of the State Police, a division of the Department of Law Enforcement. In the earlier stages of this action the petitioners' claim was one of three class actions brought to contest the validity of the Executive Order and the Board's action. Only the state troopers have contested the Supreme Court of Illinois' decision.

The evidence shows that prior to May 14, 1973, the Fraternal Order of Police and the Illinois Police Association took the position that the state troopers should not have to file statements. A hearing was held on May 24, 1973 at which time testimony was taken, and the Board subsequently advised petitioners that they would not have to file statements until further notice. In addition, the Board has received approximately 25 objections raised by certain individuals which had not been

ruled upon at the time of trial. In order to develop the basic format as well as the content of the statement, the Board held a public hearing to discuss the contents of proposed forms and instructions and invited many state employee organizations to attend to present their comments.

The Board decided that adjusted gross income as defined on the federal income tax Form 1040 should be included as part of the statement. Employees were given the option of enclosing a copy of Schedule D of the federal Form 1040 income tax return with the statement instead of restating capital gain transactions on a separate sheet of paper. Copies of federal and state income tax returns were also required to be submitted. These documents were not made a part of the statement and, by rule of the Board, are not open to public inspection. Rather, they are sequestered in separate filing cabinets apart from the statements. The forms were distributed through agency and department heads with approximately 6800 persons in over 80 agencies being initially required to file statements. As previously stated, approximately 1800 state troopers and 25 individuals were not under any obligation to file due to their objection to the filing requirement.

Due to the pendency of these proceedings and the injunctive restraints imposed by the trial court, the Board has not been able to promulgate rules and regulations to provide for an orderly system of public disclosure or to provide for a system of examining the statements, nor has the Board had the opportunity to determine what kind of financial relationships might cause conflicts of interest or how to assist state employees in managing

any conflicts of interest which arise. As of this date the Board has not permitted public inspection of any disclosure statements. Until public hearings can be held on the matter, the Board does not propose to issue rules and regulations regarding public disclosure or to permit examination of such statements.

Finally, because of these proceedings, the Board has not been able to consider amendments, alterations or substitutions of its rules, regulations and procedures, or to consider and implement the decision of the Supreme Court of the State of Illinois.

ARGUMENT

I.

THE PETITION IN THE INSTANT CASE SHOULD NOT BE GRANTED BECAUSE PETITIONERS HAVE FAILED TO RAISE A SUBSTANTIAL FEDERAL QUESTION.

In *Zucht* v. *King*, 260 U.S. 174 (1922), this Court established the principle that the jurisdictional requirements for federal review of a high state court decision included not only the finality of the state court judgment, but the presentation of a substantial federal question. While the appellate jurisdiction of this Court extends, on its face, to all final decisions of a state's highest court in cases where any right, title, privilege or immunity is specially set up or claimed under the Constitution of the United States, *Zucht* clearly established that implicit in that jurisdictional grant was the threshold requirement that the cause present a substantial federal question.

In *Sugarman* v. *U.S.*, 249 U.S. 182, 184 (1918), this Court recognized that, though the validity of the law was formally drawn into question by the writ, such was insufficient to sustain jurisdiction when it appeared that the constitutional question presented was not substantial in character.

The petitioners in the instant case, though nominally presenting a federal constitutional question, have failed to meet the jurisdictional requirement of substantiality. In their petition, petitioners have alleged that Executive Order No. 4 (1973), and the financial disclosure state-

ment promulgated to implement that Order, violate petitioners' general constitutional rights to "privacy," "equal protection of the law," "due process," and "freedom of association." Although the petitioners have failed to specify the provisions of the United States Constitution upon which they rely, it appears that they are attempting to invoke the protection of the First, Fifth and Fourteenth Amendments to the United States Constitution and the certain "penumbras" which have been found to be implicit therein.

While no longer contesting the constitutional authority of the Governor to order state employees to make financial disclosures, the petitioners again assert that the Order in issue and as implemented is constitutionally infirm by virtue of being vague and overbroad, is an unreasonable invasion of privacy, and is discriminatory, as well as being a restraint on the freedom of political association.

It is submitted that these alleged federal constitutional issues are insubstantial in the overall context of the present litigation. The petitioners are not before this Court as private citizens, but are public employees belonging to that class known as state troopers. As such, they do not have standing to assert claims on behalf of public employees in any other department of the Executive Branch or on behalf of spouses of public employees. Conversely, because petitioners are public employees and, more particularly, are employed as members of the state police force, their conduct is more susceptible to regulation than that of private citizens or even that of other state employees. Since the petitioners are not presently threatened with any penalties for failing to file a financial statement or for filing an incomplete financial state-

ment, because the Board has not finally determined that all troopers must file financial statements, this controversy can only be concerned with a challenge to the Order and the financial statement on the grounds that on the face of these documents they are clearly repugnant to the United States Constitution. Instead of seeking an adjudication whether a specific application or interpretation of the Order has or immediately threatens to abridge an individual petitioner's constitutional rights, petitioners have raised a general objection that the Order and the financial statement on their face are inherently defective. Both the trial court and the Supreme Court of Illinois have addressed themselves to the petitioners' arguments and have upheld the Order and the financial statement. While a case might arise *in futuro* which would present a concrete factual situation in which the Order as interpreted or applied could violate the petitioners' rights as alleged, the Court found that petitioners had clearly failed to demonstrate that either the Order or the financial statement was invalid on its face.

In rendering its decision the Supreme Court of Illinois rejected the petitioners' alleged violation of their right to privacy as well as the petitioners' cavalier attempt to analogize the instant situation to that present in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). The court correctly analyzed the present situation, noting that this is not a case in which a court is being called upon to deal with the most intimate relationship of husband and wife, or with an effort by the state to control their decision as to bearing children. Rather, the court is called upon to review a state requirement that the financial affairs of persons who are paid by the public, who occupy positions of high public trust and who historically are subject

to close scrutiny and regulation of their personal affairs, be disclosed.

It is this relationship of public employer and public employee that is being regulated. The requirements of disclosure of economic assets and interests is neither the only, nor the most significant manner in which the legal rights of those who accept public employment are distinguished from the rights of private citizens. A striking example of this distinction, found in this Court's treatment of a public employee's right to sue for defamation, was noted by the Illinois Supreme Court:

> "Since the decision of the Supreme Court of the United States in New York Times Co. v. Sullivan (1965), 376 U.S. 254, 11 L.Ed.2d 686, 84 S. Ct. 710, the right of a public official or employee to recover damages for false and defamatory slander and libel charges which may destroy his good name have been curtailed (see St. Amant v. Thompson (1968), 390 U.S. 727, 20 L. Ed. 2d 262, 88 S. Ct. 1323; Ocala Star-Banner Co. v. Damron (1971), 401 U.S. 295, 28 L. Ed. 2d 57, 91 S. Ct. 628; Restatement (Second) of Torts (Tent. Draft No. 20) sec. 581)A, 57 Ill. 2d 512, —— N.E. 2d —— (1974) (Pet. App. A, p. 30)).

A careful analysis of the present situation demonstrates the fundamental misapprehension upon which the petitioners' argument is fashioned. While strenuously asserting that the respondent has unconstitutionally invaded petitioners' right to privacy, the petitioners have chosen to ignore prior decisions of this Court which have consistently upheld the right of a public employer to impose limitations on certain rights and activities of public employees, although such limitations might not be permissible in the private sector. In *United Public Workers of America* v. *Mitchell*, 330 U. S. 75 (1947), this Court stated:

> "For regulation of employees, it is not necessary that the act regulated be anything more than an act reasonably deemed by Congress to interfere with the efficiency of the Public Service." 330 U.S. at 101.

More recently, in *United States Civil Service Commission* v. *National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548 (1973), this Court "unhesitantly reaffirm[ed]" the *Mitchell* case in the course of its opinion sustaining the Hatch Act prohibition of political activity on the part of federal employees. 413 U.S. at 556. The Court observed:

> "But, as the court held in Pickering v. Board of Education, 391 U.S. 563, 568 (1968) . . ., the government has an interest in regulating the conduct and 'the speech of its employees that differ [S] significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interest of the [employee], as a citizen . . . and the interest of the [government], as an employer. . . .' Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interest sought to be served by the limitations on partisan political activities[2] now contained in the Hatch Act." 413 U.S. at 564-565.

Contrary to petitioners' belief, the State of Illinois throughout all of its branches has long recognized a crucial and compelling interest in insuring honesty among government officials and employees. This prohibition against

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2. *See also*, Broadrick v. Oklahoma, 413 U.S. 661 (1973).

conflicts of interest has been recognized at common law, by constitution, and by statute.[3]

Futhermore, prior to this action the State of Illinois has shown a special interest in regulating the activities of the instant petitioners, who are members of the state police, by enacting the Illinois State Police Act (Ill. Rev. Stat. ch. 121, § 307.15 *et. seq.* (1973)) which prohibits any participation in partisan political activities by state police.

It is quite evident that the legislative, judicial and executive branches of the state government, as well as the framers of two Illinois constitutions and the people of the State of Illinois have determined that the public disclosure of economic interest is a primary means of preventing conflicts of interest within state government. While it may be inappropriate to require every public

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3. *See* Panazzo v. City of Rockford, 306 Ill. App. 433, 28 N.E. 2d 748 (1940); Cruse v. Streamwood Utilities Corp., 34 Ill. App. 2d 100, 180 N.E. 2d 731 (1952); Ill. Rev. Stat., ch. 102, § 3 *et . seq.* (1973) (specifically prohibiting conflicts of interest by all elected or appointed state officials); Illinois Constitution of 1870, (Article 8, Section 4); the Governmental Ethics Act of 1967, Ill. Rev. Stat., ch. 127, § 601 *et seq.* (1971), now superseded by the 1972 Act of said title, Ill. Rev. Stat., ch. 127, § 601 *et. seq.* (1972); Illinois Constitution of 1970, (Article 13, Section 2); Illinois Supreme Court Rules, 61-71, Ill. Rev. Stat. ch. 110A, § 61 *et seq.* (1973); Executive Order No. 4 (1970), (The Honorable Richard Ogilvie, Governor of the State of Illinois, setting forth the code of conduct for employees subject to the Governor's jurisdiction and readopting and continuing an Executive Order originally issued by then Governor Otto Kerner in 1967).

employee, regardless of positions, to make full and complete financial disclosures, the overriding interest of the public welfare mandates that those who are in positions of public trust and confidence and have the power to influence or control decisions in government, be required to maintain their private affairs so as to avoid any actual or potential interferences or conflicts of interest with their public employment.

The type of disclosure in issue helps to prevent conflicts of interest and reassures the public that no conflicts of interest exist because: (1) it insures that the officials responsible for preventing conflicts of interest and the public will obtain the information necessary to detect conflicts of interest; (2) it establishes a system whereby state employees must necessarily achieve a greater awareness of possible or potential conflicts of interest, and whereby the Board of Ethics can assist state employees in managing such conflicts; and, (3) it serves to dispel public suspicion engendered by past governmental misconduct while instilling trust in government. When these important state interests in financial disclosure are weighed against the petitioners' right to privacy it is apparent that the Executive Order and the Board's action do not impermissibly deprive state employees of their right to privacy guaranteed by the Constitution of the United States, as noted by the Supreme Court of the State of Illinois and the Circuit Court of Sangamon County:

> "As noted, in the balancing of the individual employee's fundamental right to privacy and the state's compelling need for efficient, ethical government, the state's interest predominates. To promote its interest, the state is requiring complete financial dis-

> closure. Such a means is substantially related to the end and is not overbroad. While full financial disclosure is burdensome, anything less would be ineffective in accomplishing the goal. . . . It is misleading, and ultimately undermining of public confidence, to institute a disclosure program having exemptions as broad as the coverage. The inclusion of dollar amounts is justified because it allows for detection of many more types of unethical conduct." 57 Ill. 2d 512, —— N.E. 2d —— (1974) (Pet. App. A, p. 32).

The petitioners have also alleged a two-fold abridgement of their right to equal protection of the laws. First they argue that the jurisdictional limitation of the Board's power to those departments and agencies "whose vouchers are subject to approval of the Department of Finance" constitutes an unreasonable classification and an impermissible discrimination between members of one class. Second, they contend that requiring all those who occupy "positions subject to undue influence" imposes a vague and indefinite standard not susceptible of precision or uniformity in application.

Petitioners' contention that the limitation on the Board's authority to those departments and agencies whose vouchers are subject to approval of the Department of Finance, impermissibly discriminates between members of the same class and attempts to treat members of the same class differently, presents no federal constitutional claim meriting further argument or consideration by this Court. The basis of that limitation is derived from the constitutional structure of Illinois government and from the organization of the executive branch of government in the State of Illinois, rather than from any attempt to discriminate against petitioners.

The State Finance Act (Ill. Rev. Stat. ch. 127, §135.1) establishes a system for controlling state expenditures. In Section 10 of that Act (Ill. Rev. Stat., ch. 127, §146), the Legislature has provided that all code departments and all boards and agencies, with certain limited and specific exceptions, are not permitted to draw funds from the State Treasury unless their vouchers have been approved by the Department of Finance. The Director of the Department of Finance, who is appointed by the Governor, must report to the Governor, and is thus subject to his control. (Ill. Rev. Stat. ch. 127, §§12, 25).

There are certain exceptions under this system, however, such as the secretary of state; for the various courts; for the two legislative bodies; and for the various universities and state colleges. The Illinois State Toll Highway Authority which collects its own revenues, has a separate fund held by the state treasurer, and which can draw on that special fund without the approval of the Department of Finance (Ill. Rev. Stat. ch. 127, §314) is similarly excepted. In establishing these exceptions, the Legislature has manifested its intention that the excepted groups be independent from financial control by the Department of Finance which is ultimately subject to the control of the Governor.

The jurisdiction of the Board thus includes those agencies and departments over which the Governor exercises the most direct control, while at the same time preserving the scheme of intra-governmental relationships established in the Illinois Constitution as effectuated by the acts of the Illinois Legislature. The state employees excluded from the jurisdiction of the Board work for governmental bodies of a totally different nature than the state police, and, in many cases, for organizations outside the juris-

diction of the Governor of the State of Illinois. In fact, the petitioners' enumeration of the supposedly significant offices or organizations which are not covered by this Order reveals the inherent fallacy in petitioners' argument of denial of equal protection. The vouchers of the Lieutenant Governor's office, the Secretary of State, the State Treasurer, the Superintendent of Public Instruction, the Attorney General, and the Comptroller are subject to control and review within the respective independent executive offices, which are each headed by an independently elected state official. The vouchers of the Courts and the Legislature of the State of Illinois are subject to review by their respective branches because they are indefendant and co-equal branches of government. Their internal operation and organization are wholly without the scope of power of the executive. Again, the Board of Governors of state colleges and universities is an independent agency created by the Legislature whose function was specifically intended to remain free from interference or control by the Governor.[4] As to the vouchers for the Governor's office, the issue is moot. As was shown at trial, the Governor, subsequent to the issuance of Executive Order No. 4 (1973), subjected all employees of the Governor's Office to the jurisdiction of the Board, notwithstanding the fact that said vouchers were not subject to approval of the Department of Finance.

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4. It should be noted that numerous governmental bodies and agencies which the petitioners have alleged to be impermissibly exempted from disclosure requirements, are, in fact, already required to make disclosure, pursuant to the Illinois Governmental Ethics Act (Ill. Rev. Stat. ch. 127 §601-101 *et seq.*, as amended by P.A. 77-1806, January 24, 1972).

Further, it is not necessary to question whether the Governor should have included bodies such as those listed above because where, as here, there is a rational classification whereby exclusions are consistent with the purposes of governmental action, there is no denial of equal protection *McGowan* v. *State of Maryland*, 366 U.S. 420 (1961).[5]

The Supreme Court of Illinois has on prior occasions shown that it has a firm understanding of the proper equal protection standard and has applied it correctly to Illinois intra-governmental relationships, particularly in the realm of disclosure requirements.

Furthermore, petitioners' attempted reliance on *Yick Wo* v. *Hopkins*, 118 U.S. 355 (1886) and *Rinaldi* v. *Yeager*, 384 U.S. 305 (1966), is misplaced. The principles announced in the latter cases reveal that in defining a class subject to legislation, the equal protection clause is not violated when distinctions drawn have "*some relevance* to the purpose for which the classification is made." (384 U.S. at 308) (Emphasis added). Both the trial court and the Supreme Court of Illinois in the instant case have examined the relationship between the Executive Order and the purposes for which it was promulgated and have found this classification to pass constitutional muster.

The petitioners do not contend that the Supreme Court of Illinois has applied an improper standard to determine

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5. *See also*, Kotch v. Board of Riverport Pilot Commissioners, 330 U.S. 552 (1947), Metropolitan Casualty Insurance Company of New York v. Brownell, 294 U.S. 580 (1935); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911); Atchison, T. & S. F. R. Co. v. Matthews, 174 U.S. 96 (1899).

their equal protection claims; rather, they challenge the Court's application of that standard to the particular intra-governmental relationships in the State of Illinois.

The Supreme Court of Illinois has, on prior occasions, shown that it has a firm understanding of the proper equal protection standard and has applied it correctly to Illinois intra-governmental relationships, particularly in the realm of financial disclosure requirements.[6] In addition, it is well settled that the equal protection clause is not violated if a state chooses to take action in one area while abstaining from such action in another area. A state is not required to address itself to all aspects of a problem at one time; rather, it may address itself to that phase of the problem which it deems most acute. The prohibition of the equal protection clause goes no further than *invidious discrimination.*[7]

In the instant case, the facts demonstrate that the exclusion of certain agencies, boards and other bodies does not rest on grounds "wholly irrelevant to the achievement of a state's objective," nor does it constitute an "invidious discrimination;" it does have "some relevance" to the purpose for which the classification is made.

Petitioners' second allegation concerning a denial of equal protection and due process of law is similarly fatally defective and fails to raise any substantial federal

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6. Stein v. Howlett, 52 Ill. 2d 570, 289 N.E. 2d 409 (1972), *app. dismissed*, 93 S. Ct. 2750 (1973).

7. *See* Williamson v. Lee Optical, 348 U.S. 483 (1955); Tigner v. Texas, 310 U.S. 141 (1940); Semler v. Oregon State Board of Dental Examiners, 294 U.S. 608 (1935); A. F. of L. v. American Sash Co., 335 U.S. 538 (1949).

question. By concentrating on a supposed lack of specificity in the requirement that those holding "positions subject to undue influence" must file financial disclosure statements, the petitioners conveniently ignore the fact that the Board has been invested with the power, authority and responsibility to determine which positions within the scope of its jurisdiction are susceptible to "undue influence."

As previously noted, the Board requested all agency department heads to submit lists of those job classifications which the particular department or agency deemed to be susceptible to undue influence or abuse. The Board met and reviewed these lists to determine whether, in its independent opinion, each particular position was one which required the holder thereof to file a financial disclosure statement. If the Board determined that the position in question was not one subject to undue influence, then the inquiry was concluded and the holder of that office was not required to file a statement. However, if the Board determined that the position was subject to undue influence, the Board sent the employee in question a notice that he was required to file the financial disclosure statement. The rules of the Board provided that upon receipt of this notice any individual employee had the right, within a prescribed period of time, to object to the determination of the Board and to demand a hearing before the Board. The Board was then required to hear and to consider any evidence and/or argument from the objecting employee. Until such time as the decision of the Board was announced and the employee notified thereof, the employee was under no obligation to file a financial disclosure statement. In the case of the instant petitioners,

the Board has met and has heard evidence but has not reached a final decision of whether the petitioners are subject to the reporting requirements. Thus, at the present time, the petitioners are not obligated to file financial disclosure statements.

Through the use of the aforementioned procedures, it is the intention of the Board to develop a consistent and meaningful standard for determining which positions in state government are subject to undue influence. Because of the peculiarities and the needs of the many agencies, commissions and departments under Board's jurisdiction, any such definition will, of necessity, be a transactional one looking to the particular duties, responsibilities, powers and discretion of the position involved. In order to safeguard the rights of each employee the Board has provided the foregoing procedures in an effort to fairly and conscientiously apply filing requirements. The Supreme Court of Illinois found this procedure to be manifestly correct, stating:

> "The record shows that the objections were filed by some employees, but that because of the issuance of a preliminary injunction in this case, the objections have not as yet been ruled upon. In our opinion, the Board pursued a reasonable course in permitting those having supervisory authority to make the initial determination as to the vulnerability of particular positions, subject to specific review by the Board. We hold that the rights of any effective person to due process of law or to equal protection of law have not been violated by the procedure employed." 57 Ill. 2d 512, —— N.E. 2d —— (1974)) (Pet. App. A, p. 26-27).

The petitioners have also alleged the Executive Order is infirm on the grounds that the term "positions sub-

ject to undue influence" is itself so vague and lacking in specificity as to defy definition. Respondent respectfully urges this Court to reject such arguments on the basis that it is manifest that this contention does not present a substantial federal question meriting further argument or review.

It appears that the petitioners are concerned with the fact that the phrase "persons and positions subject to undue influence" has not been defined in other statutes with which petitioners are familiar and that the development laws pertaining to public official disclosure have occurred only in the most recent years. Thus, petitioners fear that they will be denied equal protection and due process of law through the non-uniform application of this term. This contention would be viable if the Executive Order in question had not established the Board of Ethics and invested it with the power to investigate, hold hearings, and promulgate rules and regulations to define this term. It was the intention of the Governor in using such terminology to impose both a positive and negative limitation on the requirements for financial disclosure. The intent of the phrase is obvious: It is unnecessary to require full disclosure from the tens of thousands of state employees who do not hold positions where conflict of interest is likely to arise and to interfere with their judgment in the performance of their duties; it is, however, necessary and entirely proper to require full financial disclosure from those state employees who, in the context of the work which they perform, hold positions where conflicts of interest are likely to arise and interfere with the employees judgment in the performance of their

duties.[8] This distinction between employees who are and who are not required to make the disclosures was obviously the reason why the constitutional convention in drafting the Illinois Constitution of 1970 declined to make disclosure mandatory for all state employees.

The phrase "whose position is subject to undue influence" carries a meaning no less clear and no less definite than the phrases such as "in the course of employment," (Workmen's Compensation Act, Ill. Rev. Stat. ch. 148, § 138.2); "discharge for misconduct" (Unemployment Compensation Act, Ill. Rev. Stat., ch. 48 § 432); "to discriminate against any individual because of his race" (Fair Employment Practices Act, Ill. Rev. Stat., ch. 48, § 853); and "infamous and disgraceful conduct" (Ill. Personnel Code, Ill. Rev. Stat., ch. 127, § 63(B)108(b)(4). In each of the above examples, the intended meaning is clear; nevertheless each phrase is litigated on almost a daily basis because it is necessary to apply the phrase to the specific factual situation involved. Though the application of a phrase with a generally understood meaning to specific factual circumstances does not always lead to an absolute and unitary result, that fact alone does not render the phrase unconstitutional. Thus, in *Stein* v. *Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409 (1972), *app. dismissed* —— U.S. —— 93 S. Ct. 2750 (1973), the Illinois

8. In the instant case, a total of about 6800 state employees are required to file statements, 800 of whom are appointed by the Governor and 1400 of whom earn more than $20,000. Of the remaining 4400, about 1800 are state policemen. This is but a small fraction of the over 60,000 state employees in agencies and departments covered by the Order.

Supreme Court held that the phrases "constructive control," and "close economic association," were constitutionally permissible (289 N.E. 2d at 414).

Further, the danger of vagueness lies in the failure to give proper notice to those individuals required to act or refrain from acting. In the instant case, no such danger exists. No one is required to file unless personally notified to do so and, having been notified to file, any employee may easily challenge that determination.

Finally, petitioners have alleged that the Executive Order No. 4 constitutes a violation of petitioners' rights under the First Amendment to the Constitution, in that each employee required to file disclose the name of each political organization of which he has been an officer, director, employee or trustee since April 1, 1972. Although the petitioners argue that requiring such disclosures violates their individual right to freedom of association, this contention does not merit review in this situation because such an issue is not presented by the facts in this case.

The only way in which petitioners can make the assertion that the Executive Order requires disclosure of political associations is for the petitioners to ignore the manifest intent of the Executive Order, the language of the Executive Order and of the disclosure statement promulgated by the Board, as well as the decision of the Supreme Court of Illinois itself. Indeed, it is difficult to understand how petitioners have construed the facts in this case to reach the conclusion that political associations *per se* must be revealed.

On their face, neither the Executive Order, the questions, nor the instructions propounded by the Board re-

quest any information regarding political associations. Rather, such documents uniformly refer to individual's economic associations. Paragraph 4(d) of the Executive Order provides that the statement of economic interest shall contain "a statement of close economic associations, indicating the person's position with each business or professional entity to which the person is associated as an officer, employee, director or partner, or in which he has a substantial interest and identifying those entities which derive substantial income from the state or from professional engagements concerning the state."

Pursuant to that requirement, the Board has required that any individual filing a statement disclose the name of all organizations other than the State in which the individual has a substantial interest, including disclosure of individual's position, payments or income to the individual, and the amount of any income which the organization receives from the State.

In passing upon this contention by petitioners, the Supreme Court of Illinois adequately disposed of the suggestion that there was any implicit attempt to obtain information concerning the employees' political associations. Though that court could not find any explicit or implicit requirements for revealing political associations, it protected petitioners from such inquiries, stating:

> "To the extent that question 19 and the related questions go beyond economic interests, they are, in our opinion, beyond the authority of the Board under Executive Order No. 4, ... [w]e hold therefore that these questions must be construed as referring only to economic associations. As so limited they are consistent with the executive order and violate no constitutional rights." (57 Ill. 2d 512, ——N.E. 2d—— (1974) (Pet. App. A, p. 35)

Further, it is simply not within the purview of those items deemed relevant in determining potential or actual conflicts of interest for employees to be required to disclose all associations which such employee may have. Rather, the disclosure requirements are specifically limited to "close associations." That is, those associations in which an employee takes an active role by holding a position or receiving payments from the association. It is also entirely relevant for the Board to know the approximate amount of income that such organization receives from the State of Illinois. Such information is necessary to determine whether an employee has ties to organizations outside the scope of his employment sufficient to place him in a position of conflicting loyalties.

As the foregoing discussion indicates, the petitioners have failed to raise any substantial federal questions in their petition. Any federal question which they may have raised is so insubstantial as to not warrant further argument or consideration by this Court. The constitutional questions which petitioners have asserted to be present are either illusory, or have been adequately and correctly disposed of by the decision of the Supreme Court of Illinois, or lack the formal prerequisites for this Court to assume jurisdiction over this matter.

II.

THE PETITION SHOULD NOT BE GRANTED BECAUSE THE DECISION OF THE SUPREME COURT OF ILLINOIS IS JUSTIFIED ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

Since petitioners have not controverted the Constitutional standards which the Supreme Court of Illinois applied in the instant case but rather are dissatisfied with

the result of the application of such correct standards to the facts presented, petitioners' attempt to invoke the jurisdiction of this Court is essentially a request to have this Court "second guess" the Supreme Court of Illinois in its analysis and interpretation of the State's Constitution and Laws. The petitioners have failed to recognize that the Illinois Supreme Court, in sustaining the Executive Order and the Board's action, relied upon independent and adequate state grounds which are wholly consistent with the United States Constitution.

The State of Illinois has embarked upon a vigorous program for insuring that officers and employees of the State maintain a high degree of ethical conduct in the performance of their duties. This scheme is demonstrated in the Illinois Constitution of 1970, statutes, rules, and decisions of the Supreme Court of Illinois.

In 1968, the Illinois Governmental Ethics Act[9] was enacted covering certain members of the Legislative and Executive Branches of the State Government. This Act was subsequently extended and its scope enlarged pursuant to the mandate to the legislature contained in the Illinois Constitution of 1970. That contains specific requirements for disclosure of economic interests:

> "Section 2. Statement of Economic Interests."
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> "All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall

9. Ill. Rev. Stat. ch. 127, §§ 601-101 *et seq.* (1973).

be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch." Ill. Const. (1970), art. XIII, sec. 2.

It is Article XIII, § 2 of the 1970 Illinois Constitution, which also provides for the issuance of this Executive Order.

The Judicial Branch of the State government is also required to make similar disclosures of economic interest as provided in Illinois Supreme Court Rule 68 (Ill. Rev. Stat. ch. 110A, § 68 (1973).

In *Stein* v. *Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409 (1972), *appeal dismissed*, 412 U.S. 925 (1973), this statewide policy and program was sustained by the Supreme Court of Illinois and the prior appeals to this Court on issues similar to those presented herein were dismissed. In that case, plaintiffs contended that the Illinois Governmental Ethics Act was unconstitutional on grounds substantially similar to those in the instant case. The plaintiffs, members of the Legislative Branch of the State government, argued, *inter alia*, that the statute constituted an unconstitutional invasion of the right of privacy and, that it was overbroad and unconstitutionally vague.

The Court recognized that one purpose of the Act was to disclose any abuse of office and to instill in the public trust and confidence in its government and officials and therefore, that broad statutory coverage was necessary in this area.

Recognizing the overriding interest of the State in promoting ethical conduct, the Court stated:

> "[I]t seems appropriate to us to require disclosures of substantial amounts of income and of significant business interests. . . . We believe that the statute as cast reflects the compelling governmental interest which is paramount to the rights of the individual, and that the statute is not overbroad as an unconstitutional invasion of privacy."
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> (citation omitted) 289 N.E. 2d at 413.

It is well settled that the United States Supreme Court will not exercise jurisdiction over federal claims when the state court decision is founded on independent and adequate state grounds. In *Herb* v. *Pitcairn*, 324 U.S. 117 (1945), this Court recognized that:

> "[T]his Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. . . . The reason is so obvious that it has rarely been thought to warrant statement. It has been found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review would amount to no more than an advisory opinion." *Id.* at 125-26.[10]

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10. *See also*, Fay v. Noia, 372 U.S. 391, 428 (1963) N.A.A.C.P. v. State of Alabama, 357 U.S. 449, 454-55 (1958).

It is submitted that the State of Illinois has manifested an independent and adequate state ground for sustaining the instant decision by reason of the compelling state interest in fostering ethical conduct among State officers and employees, as identified in *Stein* v. *Howlett*, *supra*. Even assuming, *arguendo*, that this Court would decide to exercise jurisdiction to over the petitioners' alleged federal constitutional claims, decisions of this Court indicate that the decision of the Illinois Supreme Court would remain unchanged. Since *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947), this Court has recognized the right of the State to regulate the activities of its employees. Therein, this Court stated:

> "Congress may regulate the political conduct of Government employees 'within reasonable limits' even though the regulation trenches to some extent upon unfettered political action. The determination of the extent to which political activities of governmental employees shall be regulated lies primarily with Congress." 330 U.S. at 102.

The right of the State to regulate the activities of governmental employees was recently reaffirmed in *United States Civil Service Commission* v. *National Association of Letter Carriers, AFL-CIO*, ——U.S.——, 93 S. Ct. 2880 (1973). This Court "unhesitatingly" reaffirmed the *Mitchell* decision, and found that "neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees." 93 S. Ct. at 2886.

The right of a state to regulate the political activities of its employees was also recently affirmed in *Broadrick* v. *Oklahoma*, ——U.S.——, 93 S. Ct. 2908 (1973), against the petitioner's claim that the statute was substantially overbroad and unconstitutional on its face.

Throughout these prior decisions, this Court has repeatedly recognized that regulation of the political activities of certain governmental employees does not offend the United States Constitution when that regulation is related to an important Congressional or State interest. This same rationale should be equally applicable when, as in the instant case, the State has a compelling interest of equal magnitude, that of regulating the ethical conduct of its employees.

It is submitted that were this Court to decide to exercise jurisdiction over the petitioners' alleged federal claims that this Court would sustain the decision of the Illinois Supreme Court by applying the rationale in the *Mitchell, Letter Carriers* and *Broadrick* cases.

In summary, the Supreme Court of Illinois has decided the instant case on the basis of independent and adequate state grounds and that the exercise of jurisdiction by this Court to determine the petitioners' alleged federal claims is not warranted.

III.

THE PETITION SHOULD NOT BE GRANTED BECAUSE THE ISSUES IN THIS ACTION HAVE NOT REACHED THAT LEVEL OF CONCRETENESS, ADVERSITY AND RIPENESS APPROPRIATE FOR REVIEW BY THIS COURT.

Because of the injunctive restraints placed upon the Board, it has been unable to implement or conform its procedures to the decision of the Supreme Court of Illinois interpreting Executive Order No. 4. Nor has the Board been able to rule on objections heretofore raised by

the petitioners at the time of filing the initial statement of economic interest.

It is apparent then that the relationship between the petitioners and Executive Order No. 4 currently in force and as interpreted by the Board has not developed that degree of concreteness, ripeness and adversity which this Court has previously recognized as appropriate for the exercise of its jurisdiction.

The Court is currently faced with the possibility that the Board, in view of the decision of the Supreme Court of Illinois, may recommend action which will obviate some or all of the petitioners' claims for relief. Until such time as the current fluid state of affairs is resolved in a more definitive manner, it is submitted that the Court's exercise of jurisdiction is not warranted.

This Court has recently enunciated the test for determining whether a challenge to an administrative regulation is ripe for review. Although the Board is composed of individuals appointed by the Governor, the rationale is applicable. In *Toilet Goods Association, Inc.* v. *Gardner*, 387 U.S. 158 (1967), the Court was faced with a challenge to certain regulations promulgated by the Commissioner of Foods and Drugs on the grounds that he had exceeded his statutory authority. The regulation contained penalties which the Commissioner *could* impose for non-compliance.

In refusing to exercise jurisdiction over one of the regulations, the Court stated:

> "In determining whether a challenge to an administrative regulation is ripe for review a two-fold inquiry must be made: first to determine whether the issues tendered are appropriate for review, and sec-

ond to assess the hardship to the parties if judicial relief is denied at this stage." 387 U.S. at 162.

The Court found the issues inappropriate for review because, *inter alia*, it could not determine whether the regulation would be enforced by the Commissioner. Further, the Court felt that judicial appraisal would be more appropriate in the "context of a specific application of the regulation than could be the case in the framework of the generalized challenge made here." 387 U.S. at 166.

Further, the Court found that the petitioners would suffer no irremediable adverse consequences by requiring a later challenge to the regulation upon the petitioner's refusal to comply.

In the instant case, it is submitted that the requisites of ripeness outlined in *Toilet Goods Association, supra*, have not been met. First, the issues are not appropriate for judicial resolution as the Board has not had an opportunity to implement the findings of the Supreme Court of Illinois so that the validity of Executive Order No. 4 can be determined in a specific application which reflects the Board's appraisal of that decision. To attempt to forecast the manner in which the Board will handle this decision would require the Court to indulge in conjecture and speculation.

Secondly, the petitioners have not shown that they will suffer any irremediable adverse consequences flowing from the Court's refusal to review the Board's action at this time. The Board has not clarified its position on public disclosure, and has postponed any such display until hearings have been conducted. Further, the Board has not threatened any of the petitioners with enforcement of penalties under the Executive Order.

It is well settled that federal courts established pursuant to Article 3 of the United States Constitution cannot render advisory opinions. Further, when constitutional issues are presented for adjudication, there must be "concrete legal issues presented in actual cases, not abstractions." *United Public Workers* v. *Mitchell*, 330 U.S. 75, 89 (1947).[11]

The petitioners, however, have requested this Court to review the activities of the Board of Ethics acting pursuant to Executive Order No. 4 before the Board has had an opportunity to consider and to act upon the decision of the trial court and the Supreme Court of Illinois.

Any exercise of jurisdiction by the Court at this time would require the Court to speculate as to what action the Board might take in dealing with the petitioners' claims. The Court would, in effect, be bypassing the procedure previously established by the Board to handle objections and thereby denying the Board and the petitioners the opportunity to resolve the current disputes, thus avoiding an unnecessary constitutional confrontation. In the alternative, the Board and petitioners will be precluded from an opportunity to sharpen and define the issues which divide the Board and the petitioners so that the Court in a later exercise of jurisdiction would be presented with the concrete legal issues and specific factual situations appropriate for judicial review.

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11. *See*, Electric Bond & Share Co. v. Securities Exchange Commission, 303 U.S. 419, 443 (1938); United States v. Appalachian Electric Power Co., 311 U.S. 377, 423 (1941); State of Alabama v. State of Arizona, 291 U.S. 286, 291 (1934); *see also*, United Public Workers v. Mitchell, 330 U.S. 75, 89 (1947) n. 20 and cases cited therein.

CONCLUSION

Wherefore, respondent respectfully submits that the instant petition does not present a federal question of substance, that any federal question presented has previously been determined by this Court and is so insubstantial as not to merit further argument, that the decision of the Supreme Court of Illinois in this matter is manifestly correct, that there exists adequate independent state grounds upon which to affirm the decision below, which grounds are consistent with all relevant precepts of the Constitution of the United States, and that such issues as may be presented are not ripe for adjudication by this Court, and respondent, therefore, respectfully urges this Honorable Court to deny petitioners' petition for writ of certiorari to the Supreme Court of the State of Illinois.

Respectfully submitted,

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